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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 62

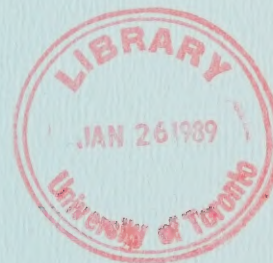
DATE: Monday, January 16th, 1989

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Environmental Assessment
Board Offices, Suite 1201, 2300 Yonge Street,
Toronto, Ontario, on Monday, January 16th,
1989, commencing at 10:00 a.m.

VOLUME 62

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

1 ---Upon commencing at 10:00 a.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen, please be seated.

4 Well, we would all like to welcome you
5 back to the Timber Management Hearing which I am sure
6 you all missed during the two-month adjournment. And
7 prior to commencing this morning with the scoping
8 session, we certainly want to express the Board's
9 appreciation to all of the parties for their
10 cooperation and very real attempt, in our opinion, to
11 assist this scoping exercise.

12 The Board has reviewed all of the
13 material, including the witness statements, and we are
14 proposing to proceed in the following fashion: We are
15 going to start with the proponent's Statement of Issues
16 which is entitled: Witness Statement, Panel 8 and we
17 are going to be using the December 28th, 1988 version
18 which we understand is the same, in effect, as the
19 redraft of November 8th, 1988 with the exception that
20 there have been some references and page numbers,
21 citations, et cetera, inserted.

22 So I think if we are all on the December
23 28th version, you can follow along.

24 What the Board is hoping to do is: We
25 are going to go through that Statement of Issues

1 paragraph by paragraph and indicate to you what the
2 Board's view is as to what may or may not be required
3 in terms of further evidence and then solicit the
4 various views of the parties.

5 Now, we have, of course, the Statements
6 of Issues submitted by all of the other parties and we
7 have attempted to put those comments on some kind of
8 grid for our own use so that we have sort of an
9 overview of where other parties stand on the various
10 issues. And I think as we proceed - and this is very
11 much a new exercise for the Board as well as the
12 parties - we may be able to reach a position where
13 there is some consensus on where we will end up when we
14 return on January 30th for the resumption of the
15 evidence.

16 So with that preamble, I would like to
17 start with paragraph 1 and indicate very briefly what
18 the Board feels should be said in relation to that
19 paragraph.

20 It is the Board's view that based on the
21 witness statements and the evidence in front of us that
22 no further oral direct examination should be necessary
23 and it may even be possible to defer cross-examination
24 on that paragraph to later panels. And our reasoning
25 behind that is that it is our understanding that

1 site-specific examples of potential timber management
2 activities are going to be dealt with in later panels,
3 and it might be wise to defer cross-examination of this
4 issue to those panels. And the panels that it is
5 likely those will arise in are Panels 10, 11 and 12,
6 for example.

7 Now, I guess having said that with
8 respect to the first paragraph, we would like to hear
9 some of the comments of some of the parties to that.
10 And I think before we get into this, let's just make
11 one more general comment and; that is: Obviously there
12 is overlap on some of these issues between what has
13 been put forward in Panel 8 and what has been put
14 forward in previous panels and probably more
15 importantly what is going to be put forward in
16 subsequent panels which deal with the specific examples
17 of timber management such as harvesting, access, et
18 cetera.

19 And the Board feels, to some extent, that
20 it has a relatively good overview of the process as a
21 result of the previous panels and the evidence to date
22 and it is our view that elements of this overview are
23 going to be applied in future panels to specific
24 examples and unless - and you will see when we go
25 through the rest of these paragraphs there are a few

1 cases - unless it is shown that we need more of an
2 overview before we get to the specific examples, then
3 perhaps it would expedite the whole process and the
4 hearing if we waited until we came up with the
5 subsequent panels and dealt with the issues in detail
6 in the light of specific examples.

7 So that is sort of the tenure that we are
8 trying to put forward today of our comments in general.

9 So dealing with paragraph 1, Mr. Freidin,
10 would you like to respond to, firstly, the Board's
11 views about that particular paragraph?

12 MR. FREIDIN: Yes. I agree with the
13 comments that are being made by the Board. It was
14 always the proponent's intention that Panel 8 be
15 introductory and I think Ms. Murphy's letter that went
16 out when Panel 8 was in fact distributed made that
17 quite clear.

18 She indicated as well that the witnesses
19 who are appearing in Panel No. 8, although they can
20 speak generally to these documents and the role they
21 play, they are not - except with some exception -
22 qualified to deal with the contents, the specific
23 substance of those documents and so it has always been
24 the proponent's intention to again use this panel by
25 way of introduction and, too, always been the view that

1 a lot of the subject matter that has been raised by the
2 statements which have been put in by the other parties
3 on this particular panel are properly dealt with in the
4 panel which deal with the specific activities.

5 THE CHAIRMAN: What about some of the
6 other parties? Ms. Swenarchuk, how do you feel about
7 the Board's suggestion that perhaps no further direct
8 evidence is necessary with respect to this paragraph
9 and perhaps cross-examination on this issue could be
10 left to later panels dealing with specific activities?

11 MS. SWENARCHUK: Well, you will recall
12 that it is our view that --

13 THE CHAIRMAN: Have you got your thing
14 on?

15 MS. SWENARCHUK: It is our view that no
16 direct evidence is required on any of the issues. With
17 respect to cross-examination, I don't think we are
18 planning to specifically cross-examine on this
19 paragraph, although our disagreement with this
20 paragraph, you know, may tangentially appear in other
21 questions that we ask, but I was not planning
22 specifically to cross-examine on the paragraph.

23 THE CHAIRMAN: Thank you. Mr. Hunter?

24 MR. HUNTER: Well, Mr. Chairman, I think
25 that the questions that we were going to have on...

1 THE CHAIRMAN: Mr. Hunter, is your
2 machine on? Okay.

3 Thank you.

4 MR. HUNTER: The questions that we were
5 going to have on that panel would really reflect the
6 theme that we would have for most of the questions and
7 that would be really to focus on the last sentence in
8 which MNR is saying:

9 "The potential effects of these
10 activities, although generally similar,
11 can have aspects that are site-specific."

12 And we were simply going to ask them
13 questions in relation to what is the general
14 similarities of the impacts and can they identify at
15 this particular point in time those aspects that are
16 site-specific. And if there are no -- there is no
17 evidence in this panel that deals with that issue, then
18 why is the question even being raised?

19 THE CHAIRMAN: Well, as I understand from
20 Mr. Freidin, you are going to deal with site-specific
21 aspects of this, but you are going to do that in later
22 panels; is that not correct?

23 MR. FREIDIN: That is correct.

24 MR. HUNTER: Well, my concern, Mr.
25 Chairman, is at what stage do we begin to pull together

1 the framework; in other words, how is this framework
2 being built?

3 My sense is: Every time general evidence
4 is being led, one is saying it is in a very general
5 nature because it can't be site-specific. At some
6 point in time we presumably are going to hear evidence
7 with respect to site-specific impacts. My concern is:
8 What is the relationship between the general framework
9 which is being established and that information which
10 is of a site-specific nature?

11 And that is the dilemma that I am in.
12 What is the framework that we are dealing with; what is
13 the general relationship between the general principles
14 and the site-specific application? I don't know.

15 THE CHAIRMAN: Well, it is the Board's
16 view, I think, that up until this point in time we have
17 been dealing for the most part with the generalized
18 principles, realizing from the proponent's outline
19 tendered at the beginning that we are going to get into
20 site-specific activities and, I would suggest, shortly.

21 And, once again, I don't think we have to
22 spend, at least from the Board's perspective, a lot
23 more time on the generalized activities if those very
24 activities are going to be discussed on a site-specific
25 basis. And again, you know, we can't structure your

1 case, Mr. Freidin, you have to tell us and tell the
2 other parties that if you are going to deal with it on
3 a site-specific basis, then can't issues like No. 1 be
4 dealt with at that time and, effectively, not much time
5 spent at this stage?

6 MR. FREIDIN: I agree. And just so
7 perhaps Mr. Hunter and others understand what we are
8 intending to do, I think the parties got -- our Panels
9 10 to through 14 have gone out.

10 Taking harvest, for example, all the
11 potential effect, both detrimental and positive from
12 harvest are identified in the witness statement and, in
13 each case, the method by which the Ministry believes
14 that those potential effects are appropriately dealt
15 with are also outlined. It is in that way that, in
16 fact, specific concerns about site-specific sorts of
17 matters are addressed either through normal timber
18 management activities or perhaps through taking special
19 measures.

20 The people who are in those panels, the
21 panels have on them people who have experience in
22 relation to that particular activity,, not all of them,
23 because some of them are giving perhaps more scientific
24 evidence about effects, but there are foresters for
25 example on each of those panels. And it seems to me

1 that if people want to question them on what sort of
2 matters they consider when they make decisions about
3 those activities and what role perhaps that a
4 silvicultural guide might play, that sort of
5 questioning, in my view, is more helpful to everyone if
6 it takes place within the context of that panel so that
7 they are hearing about harvest; here are the activities
8 and now how do you use the silvicultural guide.

9 When you might use one of these resource
10 manuals which deal about protection of bald eagles
11 nests, so I take perhaps a little longer than might
12 otherwise be the case, but I want people to understand
13 when we say site-specific that that is the way we feel
14 that the evidence will be site-specific.

15 THE CHAIRMAN: But I think in essence you
16 are agreeing with the Board--

17 MR. FREIDIN: Yes.

18 THE CHAIRMAN: That most of the time can
19 be spent when we are dealing with the specific
20 activities in both direct and cross-examination rather
21 than on this particular panel?

22 MR. FREIDIN: That's correct. And again,
23 just so no one is misled or has a misunderstanding, it
24 is not the proponent's intention to take each one of
25 the documents which are referred to in Panel No. 8,

1 whether they be a provincial guideline or whether they
2 be a resource manual and go through them one by one and
3 indicate what the detail in them is one by one. There
4 may be very brief reference to each type with an
5 explanation of generally what role they play and when
6 they may get referred to in timber management, but that
7 is going to be the extent of the evidence.

8 To the extent that certain people are
9 concerned about the content of those documents, or the
10 direction that it does or does not provide, then I
11 think that is a matter that is more properly dealt with
12 on cross-examination, not something that the proponent
13 should take a lot of time on dealing with in direct
14 evidence.

15 THE CHAIRMAN: Okay. Mr. Cosman, what is
16 the position your client?

17 MR. COSMAN: I would support the Board's
18 suggestion with respect to paragraph 1, Mr. Chairman.

19 THE CHAIRMAN: Okay. Mr. Williams?

20 MR. WILLIAMS: Mr. Chairman, I think we
21 have the same difficulties as those expressed by Mr.
22 Hunter, I guess it is the old chicken and egg game, in
23 a sense is: When do deal more appropriately with
24 issues on a site-specific basis or when do you deal
25 with them on a general basis.

1 Our concern is that to simply say we
2 don't need to continue to look at the broad picture
3 still hasn't brought us the satisfaction that we are
4 looking for to see how indeed the site specific are
5 dealt with in some type of framework that is consistent
6 with the overall administration of an activity through
7 the 47 districts.

8 We don't know -- we have yet to be able
9 to determine when they are dealing with things on a
10 site-specific basis on each one of the 47 districts has
11 a standard set of guidelines or principles or criteria
12 from which to work off. We haven't -- it hasn't been
13 demonstrated to us that there is a uniformity and a
14 consistency and a clear mandate to all of the districts
15 so that they have at least some framework within which
16 to work, recognizing that each site has an individual
17 characteristic to it. But they still must have certain
18 basis parameters within which to work. But they
19 haven't been able to bring the two together.

20 THE CHAIRMAN: All right. Mr. Williams,
21 the proponent, MNR, has put forward their positions in
22 this witness statement. Can you not attempt to address
23 your concerns and that of your client through
24 cross-examination by asking questions along those
25 lines?

1 MR. WILLIAMS: That would be our
2 intention which is why we indicated that we did want to
3 raise some matters with regard to the paragraph because
4 that cross-connection is still alluding us and...

5 THE CHAIRMAN: Well, it may be that the
6 answers to those questions - and I can't say what the
7 answers are obviously - but it may be that the answers
8 will be provided in future panels and that may be be
9 the answer that you are given.

10 MR. WILLIAMS: Well, the other dimension
11 of it is that it seems to me, from Mr. Freidin, as I
12 understood his remarks, rather than talking about
13 site-specific matters, he was talking about
14 activity-specific which I think are two different
15 things, and I think he may have been talking about the
16 activity of harvesting or the activity of regeneration,
17 but I interpret site-specific to mean something
18 entirely different.

19 THE CHAIRMAN: Well, I think in fairness
20 most of us have in mind activity-specific in terms of
21 the four activities. It may be site-specific as to
22 parts of the province as well, but certainly
23 activity-specific.

24 MR. FREIDIN: If, Mr. Williams, by
25 site-specific means that on such and such a day at a

1 specific site, which we can locate geographically, this
2 situation occurred and this is how it was dealt with,
3 that is not the gist of the large majority of the
4 evidence in relation to the panels dealing with
5 activities. It is more the activity related as I have
6 indicated.

7 To the extent that site-specific examples
8 will in fact form a major portion of the evidence of
9 the proponent, we will see that probably most in Panel
10 15.

11 THE CHAIRMAN: Okay. Well, we would like
12 to move on fairly quickly. Mr. Campbell, do you have
13 some comments?

14 MR. CAMPION: I think we do, Mr.
15 Chairman, and it is related principally to the part of
16 the paragraph that reads:

17 " The potential effects of these
18 activities, though generally similar, can
19 have aspects that are site-specific."

20 And you will notice that in the
21 additional issues portion of our issues list we have
22 addressed this matter, basically through the third
23 question.

24 Rather than simply repeat that question
25 now, what I would like to do is just spend a moment to

1 explain the kinds of concerns that we would be
2 exploring in cross-examination of this panel.

3 If I do it with this paragraph, I perhaps
4 won't need to repeat it as we go through because I
5 think it is a fairly generalized concern and I want to
6 be quite careful to say that this is a concern and it
7 is a concern that we have not yet come to a final
8 position on in this matter.

9 MR. WILLIAMS: I am sorry, Mr. Chairman,
10 if I might interrupt just for a moment. Unfortunately,
11 we don't - I don't know about other parties - but we
12 don't have copies of Statement of Issues filed by the
13 other parties. We received a few moments ago those
14 from the Northern Ontario Tourist Operators. Other
15 than that -- I know that Mr. Campbell's was delivered
16 to our office in Peterborough on Friday. I wasn't
17 there, so I don't have a copy of that, but I have seen
18 no other.

19 MR. MANDER: I have got some extra
20 copies.

21 MR. WILLIAMS: I am in the same position
22 not having copies.

23 THE CHAIRMAN: All right. Mr. Mander has
24 some extra copies that he can provide you with.

25 MR. WILLIAMS: It would be helpful. I'm

1 sorry, Mr. Campbell.

2 THE CHAIRMAN: Okay, Mr. Campbell.

3 MR. CAMPION: The concerns which we wish
4 to explore in this panel and throughout the series of
5 panels that follow really relates to our view that when
6 this approval is granted - and we do anticipate that an
7 approval will be granted - that approval will be
8 carried out on specific sites and specific pieces of
9 geography. Environmental impacts; be they water, land
10 whatever, will relate to specific pieces of geography.

11 This panel in particular deals with the
12 decision-making framework which, to a very real extent,
13 is unconnected with any piece of geography and
14 incorporates a great deal of discretion in its
15 implementation.

16 We, therefore, will wish to explore how
17 this decision-making framework, incorporating the
18 discretion that it does, will be implemented so as to
19 provide assurances demonstrable assurances that
20 environmental protection objectives will be achieved.
21 And the Board will be aware that over the course of our
22 participation in the hearing to date this has tended to
23 manifest itself around the issue of the degree of
24 - discretion that is associated with the implementation
25 of the various guidelines, resource manuals, et cetera.

1 And exploring the question as to whether,
2 given that the proponent states clearly that some of
3 the activities can be described as being generally
4 similar, is it possible to identify certain specific,
5 realistic, practical, mandatory requirements which my
6 client and others can rely on to assure a basic level
7 of environmental protection.

8 In our view, that takes or will take some
9 ability to aggregate data across the area of the
10 undertaking and to assure that the implementation of a
11 discretionary framework will actually achieve the
12 objectives that are set out for it.

13 I think Mr. Williams' comment is very
14 perceptive in that what is covered in the later panels
15 is activity-specific, but - and examples are then given
16 which I would put in the category of anecdotal examples
17 to illustrate how that framework has actually been
18 applied in certain specific cases - but I think there
19 is a more fundamental concern as to providing a
20 demonstrable assurance that the framework will in fact,
21 with all its discretion, achieve environmental
22 protection objectives.

23 And, therefore, while we say we generally
24 take no issue with the propositions of that type, I
25 want to be clear that in the issues that we have raised

1 it is that kind of question that we will be exploring
2 and at least for our thinking on the matter, while I
3 would not take objection to the Board's suggestion, it
4 would be helpful, certainly from our continuing
5 analysis of the case, to have Mr. Freidin's witnesses
6 address that specific concern. That is why we have
7 raised that in our statement.

8 So I don't want it to be taken as, I
9 guess agreeing fully to the extent that that theme runs
10 through this panel, but I think it is important to be
11 able to translate that framework down to the ground.

12 THE CHAIRMAN: Okay. But that concern of
13 both yourself and Mr. Williams can be put to the
14 witnesses in the box.

15 MR. CAMPBELL: Absolutely.

16 THE CHAIRMAN: Specifically by way of
17 cross-examination.

18 MR. CAMPBELL: Mm-hmm.

19 THE CHAIRMAN: And whatever answer they
20 can provide on a generalized basis they will or won't
21 and then you will probably have a rerun at some of
22 those questions when we deal with the specific
23 activities in terms of cross-examination.

24 MR. CAMPION: I think so, Mr. Chairman.
25 But it is my position that there is a considerable

1 benefit to the Board where matters are in issue to have
2 the witnesses appearing in-chief say it once their own
3 way and the way they see it.

4 And I have certainly - and I know Ms.
5 Seaborn has found that helpful during Mr. Freidin's
6 examinations-in-chief - and many of us who are
7 appearing as counsel would argue with the proposition
8 that when we cross-examine we have certain perceptions
9 and conclusions that we are seeking to demonstrate in
10 the course of that cross-examination and we may quite
11 always be one hundred per cent be willing to let the
12 witnesses take the opportunity to answer a generalized
13 concern their own way which they have in-chief.

14 Now, far be it for me to argue for long
15 extended examinations-in-chief when we have material of
16 this type, but where there are specific issues that
17 sort of are pulled together from all the different
18 pieces of this, I think that this exercise must both
19 identify them and show willingness to have the
20 proponent, Mr. Freidin's client, witnesses, take the
21 opportunity to address those in a very specific and
22 direct way.

23 THE CHAIRMAN: Well, we are not
24 suggesting that they shouldn't, Mr. Campbell. What we
25 are saying is the benefit, in our view, of a scoping

1 session such at this is to do just that: Is to alert
2 Mr. Freidin acting for the proponent as to what issues
3 are really concerning the parties and, therefore, spend
4 whatever time is going to be spent in direct precisely
5 answering those issues if, in fact, we determine that
6 they aren't sufficiently set out in the witness
7 statement itself. And that I think will shorten up the
8 proceedings to some extent because we won't be wasting
9 times on issues that are not in dispute.

10 All right. Why don't we move on.

11 Oh sorry, Mr. Edwards?

12 MR. EDWARDS: Thank you, Mr. Chairman. I
13 will be brief.

14 I generally support the Board's proposal
15 here. I don't think it is necessary to adduce
16 evidence-in-chief on that paragraph and I think we can
17 explore it sufficiently in cross-examination.

18 THE CHAIRMAN: Okay. Going to paragraph
19 2.

20 Once again the Board felt, reading the
21 material and basing its knowledge on the evidence to
22 date, that perhaps no further oral direct examination
23 would be necessary, but there would be probably
24 cross-examination on some issues and, in fact, this
25 panel may be the logical place to cross-examine on the

1 Ministry's training program.

2 Now, that is, Mr. Freidin, if you are not
3 going to be dealing with the Ministry's training
4 program in detail in a subsequent panel.

5 MR. FREIDIN: Okay. The training was an
6 issue which has been identified in the materials by a
7 number of the parties.

8 THE CHAIRMAN: Right.

9 MR. FREIDIN: My interpretation of those
10 comments about training is that the people are
11 concerned about what training people get in relation to
12 timber management planning and the consideration of
13 other values in timber management planning.

14 Now, if it is more than that, then I
15 would like to hear that, but if in fact that is the
16 case -- and, again, I am not putting things off just so
17 they won't be dealt with, but I am trying to get things
18 dealt with where they will be most understood.

19 If it is training in relation to timber
20 management planning, in a nutshell, the training that
21 the people get -- or the evidence will be that the
22 training that they get is in relation to the process
23 and each step of the process all as will be outlined in
24 Panel No. 15.

25 Now, it seems to me that if people are

1 concerned about what sort of training foresters and
2 others get in relation to that process, the
3 cross-examination and the evidence will be more helpful
4 if that cross-examination takes place as part of 15
5 cross-examination after the Board and everyone has
6 actually heard about that process. There is an added
7 advantage of waiting until then and that is that Mr.
8 Kennedy, who is member of Panel No. 15, has been a
9 principal player in putting together those training
10 programs over the last number of years.

11 So, that is how I would suggest that
12 training, in relation to timber management planning, be
13 dealt with. To be quite frank, I probably would not
14 have taken up more than about five minutes of
15 examination-in-chief in relation to training. I think
16 the materials are there, the witness that we are
17 putting forward is a generalist and will not -- and
18 that witness will not be in a position to in fact deal
19 with questions about the precise contents of the
20 training programs -- all the training programs which
21 are referred to and described very generally in Panel
22 No. 8 either in the text or by way of attachments.

23 THE CHAIRMAN: Well, that was the
24 certainly the Board's view, that we were already
25 advised earlier that training would be dealt with in

1 conjunction with specific activities. So it seemed to
2 us that there doesn't appear to be much more of a need
3 in this panel to go through it and it would make more
4 sense to relate it to specific planning activities.

5 And that was our reason for indicating
6 that we don't think any further direct evidence is
7 necessarily of value in this panel and the parties may
8 want to even withhold cross-examination on training
9 programs until, as you indicated, Panel 15.

10 MR. FREIDIN: It might very well be that
11 certain questions arise within the context of 10
12 through 14 which deal with activities somebody wants to
13 know about, you know: Is there any specific training
14 in relation to this aspect, whether it is operators
15 operating vehicles or whatever.

16 I think that might be an appropriate
17 place to do that and I also think that that would be an
18 appropriate matter to be the subject matter of an
19 interrogatory.

20 THE CHAIRMAN: Okay. Are there any -- I
21 don't plan to canvass each counsel each time we go
22 through each paragraph, but if there is a specific
23 comment that counsel want to make in relation to their
24 own client's perspective, then this is the time to do
25 it.

1 I think some of these are relatively
2 straightforward and they can be dealt with just in a
3 very short exchange perhaps between the Board and Mr.
4 Freidin explaining where else we are going to deal with
5 this, if we are.

6 MR. COSMAN: Mr. Chairman, if I may. I
7 was responding to the last sentence in paragraph 2 of
8 the MNR summary which says that:

9 "This panel will discuss training and
10 development programs for staff and others
11 involved in timber management."

12 In my response I indicated that I would
13 ask for elaboration first and I agree that it is not a
14 major point. I don't know what this specific training
15 is, especially with respect to others. It would be
16 very interesting for us to hear it and have that
17 elaborated on, rather than proceed by way of
18 cross-examination. We don't know, we are going into it
19 blind.

20 THE CHAIRMAN: But if the elaboration,
21 Mr. Cosman, is we are going to deal with that
22 specifically in Panel 15...

23 MR. COSMAN: Well, you know, I have no
24 problem at all in parcelling evidence with respect to
25 specific panels. If that is the answer, then I don't

1 know why it would say that this panel will discuss it.

2 THE CHAIRMAN: Well, the reason that some
3 of these things I think are dealt with in Panel is
4 that in initially organizing his case Mr. Freidin
5 obviously made some subjective or maybe objective calls
6 in the sense of saying: I am going to deal with it
7 generally here, but I am also going to deal with it
8 more specifically elsewhere.

9 And what we are saying is, is that
10 looking at this panel, in terms of trying to focus on
11 some of the issues and dealing with the evidence where
12 it is most useful, it may well be that we can delay
13 more oral evidence, both in direct and
14 cross-examination, until later panels.

15 So I realize that the parties are
16 responding to what this Statement of Issues says, but
17 this is the purpose of this session today, is to say
18 that: Notwithstanding it says this, it may be dealt
19 with in a better fashion elsewhere.

20 MR. COSMAN: If we have that commitment,
21 Mr. Chairman, I have no difficulty whatsoever.

22 MR. FREIDIN: Looking at Mr. Cosman's
23 comment it may very well be necessary for us to direct
24 some remarks in direct evidence to that.

25 Again, it is not the intention of the

1 proponent to, in fact, review in detail the training
2 that people get in relation to timber management
3 planning. It will be an indication, as I have stated,
4 of what the subject matter of Panel No. 15 is to a
5 large extent the detail of planning or training that
6 people involved in timber management planning get and I
7 would expect that it would be very general evidence by
8 Mr. Kennedy as to how often these are held, who goes to
9 them and that sort of thing.

10 The details of it, I think, is something
11 that again can be dealt with either on
12 cross-examination or by specific questioning on an
13 interrogatory.

14 THE CHAIRMAN: Okay.

15 MR. COSMAN: Mr. Chairman, if I may. It
16 would be very helpful for cross-examination to have
17 that general elaboration as to what is meant by the MNR
18 when it indicates that it will be discussing the
19 training programs for their staff and others.

20 THE CHAIRMAN: Right. But I think
21 something like that can be put on the record--

22 MR. COSMAN: Very briefly I agree.

23 THE CHAIRMAN: --in five minutes.

24 MR. COSMAN: Yes.

25 MR. FREIDIN: As I understand it, Mr.

1 Cosman, you are concerned about the statement about
2 others; is that your main concern?

3 MR. COSMAN: Well, I would like to
4 hear -- have an elaboration on both. I understand it
5 will be elaboration on specific training in future
6 panels. I don't know why others was included. I am
7 very interested in hearing what the answer to that
8 question is.

9 THE CHAIRMAN: Ladies and gentlemen
10 paragraph 3. Sorry?

11 MR. HUNTER: Mr. Chairman, I just
12 simply -- we will probably cross-examine quite
13 extensively on that paragraph. We see that as -- I
14 have a great deal of difficulty understanding that
15 paragraph.

16 MR. WILLIAMS: Which paragraph is that?

17 MR. HUNTER: This is paragraph 2.

18 THE CHAIRMAN: Two.

19 MR. HUNTER: So I just want to make sure
20 there is no misunderstanding when we appear in
21 February.

22 THE CHAIRMAN: No, and let there be no
23 misunderstanding on the part of the Board. The Board
24 is not saying that you cannot address these issues in
25 direct or in cross-examination.

1 What we are trying to do is to focus the
2 issues to the extent that it may not require any kind
3 of elaborate direct examination and, as a result of
4 some of the direct examination and the information
5 provided, you may find that your cross-examinations are
6 better put off to a subsequent panel.

7 If that is not the case that is your call
8 to make and if you wish to cross-examine, provided that
9 your cross-examination at all times is relevant, then
10 the Board of course will permit it.

11 MR. HUNTER: I think, just to set the
12 context, I don't want our silence to be indicated we
13 won't be cross-examining. I just reiterate from our
14 perspective some of the comments that Mr. Campbell
15 made, I believe it is on the record, when he stated to
16 the panel that this hearing may be about environmental
17 planning and it may even be about timber management
18 planning practices, but it is definitely about decision
19 making.

20 And we see very much the panels to date
21 dealing with those issues and certainly Panel 8
22 continues that theme. And our great concern, of
23 course, is what other parties have said. What is the
24 relationship, what is the framework that affects that
25 decision-making, how it applies on the ground.

1 Thank you.

2 THE CHAIRMAN: Okay. Mr. Williams?

3 MR. WILLIAMS: Mr. Chairman, again we
4 were of the same view and I think I have been given
5 certain assurances during the lead-in Panels 6 and 7
6 when we were exploring the areas of responsibility for
7 decision-making and the mechanics for equipping and
8 training people to perform and discharge their duties
9 adequately in their particular areas of expertise.

10 I think on more than one occasion we were
11 directed, not just to Panel 15, but I think to find our
12 answers in Panel 8 and our opening comment I think was
13 a reflection of our view that this would be the
14 appropriate panel in which we would be able to get to
15 the substance of that issue as set out in the last
16 sentence to paragraph 2.

17 And so I was somewhat concerned to hear
18 Mr. Freidin say that: No, on this panel we will have a
19 witness who is a generalist and cannot speak in very
20 specific terms to these issues. And yet I think we
21 have been, to some extent, led to believe that this was
22 the panel that was going to produce the expertise that
23 could open the door to this mystery that has been
24 confronting us as to how the specialists in all the
25 different areas are brought together into a unified and

1 standardized type of undertaking that brings continuity
2 and consistency to the delivery of the program. And it
3 is at the district level that this occurs, and this is
4 where I guess this panel is taking us, or keeping us at
5 the district level and I think this is where we have to
6 explore, in some depth, those issues.

7 MR. FREIDIN: Well, that's hard for me to
8 respond to until I have heard the questions. I think
9 there is a little bit of truth -- or, I mean, I would
10 agree with a little bit of what everybody says but not
11 totally. It is very difficult for me to say ask - I am
12 not saying you can't ask any questions on training, I
13 am not suggesting that, but I can't comment any
14 further, Mr. Chairman.

15 THE CHAIRMAN: We aren't saying that
16 either. All we are saying is, make sure when you are
17 putting in the evidence in any of these panels that
18 you, to a large extent, are not repeating what has
19 already gone in and if it is set out fairly extensively
20 in the witness statement itself, you may not have to
21 elaborate over and beyond what is in there to a large
22 extent and that, of course, will open up for
23 cross-examination whatever the parties wish to
24 cross-examine on.

25 Your answers on cross-examination may be

1 simply that we can't deal with it here, but we are
2 going to deal with it elsewhere, or we are not going to
3 deal with it at all. That is all we are saying.

4 I think I would like to move on to
5 paragraph 3. The Board feels that a lot of the items
6 set forth in this paragraph have already been dealt
7 with adequately elsewhere earlier in this proceeding.
8 And you may wish to elaborate on these activities as
9 they relate specifically to the activities we are going
10 to be dealing with in subsequent panels, but certainly
11 to put forward another review of the legislation which
12 gives rise to the Ministry's jurisdiction, so to speak,
13 and to take us through once again the responsibility
14 for resource planning, which I think has been covered
15 even as far back as Panel 1, to us, would seem unduly
16 repetitive.

17 Now, it may be that parties will have
18 specific questions in cross-examination concerning that
19 but, again, we don't want to rehash, in our view, what
20 is already on the record.

21 MR. FREIDIN: And we won't.

22 MR. WILLIAMS: Mr. Chairman, with regard
23 to this paragraph, I guess it comes more to...

24 THE CHAIRMAN: Can you speak up a little,
25 please, Mr. Williams?

1 MR. WILLIAMS: I guess paragraph 3 ties
2 in with paragraph 6 in large measure, Mr. Chairman, and
3 so I don't know whether to reserve our remarks until
4 paragraph 6.

5 In any event, let me say this: Certain
6 legislation has been explored at some length in the
7 earlier panels, but it is our position, Mr. Chairman,
8 that there is other legislation that is relevant to the
9 matters before you that have have yet to be explored.

10 THE CHAIRMAN: Well, there is nothing to
11 prevent new information coming in, Mr. Williams. We
12 are certainly not suggesting any curtailment there.

13 What we are suggesting is, is that if it
14 has been covered before, it doesn't have to be reviewed
15 again in this panel. That is all we are saying.

16 MR. WILLIAMS: I just said there is
17 legislation that we haven't dealt with.

18 THE CHAIRMAN: And it may be that Mr.
19 Freidin doesn't intend to deal with all of that
20 legislation, but you could certainly raise the
21 questions on cross-examination.

22 MR. FREIDIN: And it is my understanding,
23 Mr. Chairman, that that comment about not raising
24 things which have already been dealt with - again, to
25 some extent giving some flexibility to

1 cross-examination - does in fact apply to
2 cross-examination and not only the case of the people
3 calling the evidence-in-chief?

4 THE CHAIRMAN: Yes, it should. Because
5 once again our obligation, as we understand it under
6 the Statutory Powers Procedure Act, is to allow
7 cross-examination and to allow the parties to examine
8 witnesses and present evidence and arguments and
9 submissions, but it doesn't extend to us having to
10 indure cross examinations on the same evidence more
11 than once.

12 If it has been covered, the parties have
13 had an opportunity to cross-examine on it, then the
14 Board feels it is within its jurisdiction to say:
15 Enough, move on to something that hasn't been
16 cross-examined on and is going to provide us with
17 information that we already don't have.

18 So it applies to both those producing the
19 direct evidence and those cross-examining.

20 MR. WILLIAMS: Mr. Chairman, with regard
21 to the last part of that item 3 dealing with the
22 delegation of responsibilities of the regional director
23 and district managers, while there has been a
24 considerable amount of evidence introduced in the
25 preceding panels with regard to their various

1 responsibilities, again I think that was one of those
2 situations which I can use my example where I think it
3 was suggested that further questioning as to their the
4 respective roles and the interaction between them and
5 the public at large would be matters better dealt with
6 in Panel 8 and panel 15.

7 And it is in that context that I felt
8 that here too we would be simply expanding upon those
9 issues that were there in previous panels and I don't
10 consider that to be repetitive but rather an
11 elaboration on what had gone before.

12 THE CHAIRMAN: Well, it may not be
13 repetitive and we will have to make the call along with
14 the parties as to whether or not it is. But what we
15 are saying is: If it has been dealt with generally in
16 a earlier panel and it is going to be dealt with more
17 specifically in a later panel dealing with the
18 activities, we don't need it generally for a second
19 time.

20 And that is what we are going to be
21 watching out for.

22 Okay. Paragraph 4: The Board felt that
23 this paragraph is, in effect, an introduction to later
24 paragraphs and that there isn't much need for oral
25 direct or cross-examinations on this specific

1 statement. That was the Board's impression upon
2 reading this particular paragraph.

3 In other words, we feel that some of this
4 in this paragraph 4 is dealt with later in the
5 Statement of Issues itself more specifically. But this
6 is really by way of introduction and in the witness
7 statement it is in that form.

8 MR. FREIDIN: Mr. Chairman, I didn't come
9 prepared to deal with it in quite the fashion that you
10 have adopted this morning.

11 What I can tell you - and perhaps this
12 might be helpful to people - I didn't anticipate that
13 the evidence in this panel would take much more than a
14 day, maybe a day and a half and that the evidence of
15 Mr. Strait would be primarily to, in fact, identify or
16 review in a general way the three types of
17 implementation manuals and their relationship perhaps
18 to each other:

19 Why provincial guidelines for this but
20 not for that; what are the criteria that are used to
21 determine something is going to be a provincial
22 guidelines as opposed to not, this business about what
23 does it means when it says provincial guidelines are
24 mandatory or not. That was going to be the main thrust
25 of Mr. Strait's evidence.

1 Mr. McNamee, who has been called in
2 relation to the ESSA project, was in my view going to
3 take the majority of the time. His evidence is
4 certainly different than the other witnesses. A number
5 of the parties have --

6 THE CHAIRMAN: But is his evidence going
7 to be repeated in Panel 15 when we deal with
8 monitoring?

9 MR. FREIDIN: No.

10 THE CHAIRMAN: Or 16 rather?

11 MR. FREIDIN: No, no, and that's why it
12 is important I think for Mr. McNamee to give the
13 evidence on the methodology that was used in that
14 process because the results of the project that was
15 conducted by ESSA, in fact, plays an important role in
16 terms of the monitoring program which has been designed
17 by the Ministry and which will be the subject matter of
18 16.

19 THE CHAIRMAN: Okay. But just out of
20 curiosity, why wouldn't you deal with the methodology
21 and the study and the results of that study at one time
22 as opposed to trying to break up the methodology in
23 this panel and then going to the study itself and the
24 results of the study in Panel 16?

25 MR. FREIDIN: Firstly, it is my

1 submission that an understanding or an assessment of
2 the adequacy or the approach to setting the actual
3 monitoring program itself is best understood after an
4 understanding of what the activities are and what the
5 potential effects of those activities are on the
6 environment.

7 So, therefore, I don't see how you can
8 split up -- we have left it until 16 to deal with that
9 monitoring program until such time as the effects
10 panels are completed.

11 Why are we calling part of the monitoring
12 related, if I can put it that way, evidence in 8 and
13 not leaving it all until 16; it is because that in
14 carrying out that exercise, that ESSA exercise, a
15 number of hypotheses in terms of potential effects of
16 timber management were discussed. Certain conclusions
17 were drawn as to -- or consensus was reached as to what
18 certain effects were and there were also indications as
19 to what gaps there may have been in terms of the
20 understanding of the relationship between certain
21 activities and certain effects.

22 The witnesses in Panels 10 through 14
23 will, where required, be referring to the results of
24 the ESSA study to the extent that it, in fact, did
25 identify what were or what were not effects of timber

1 management. Therefore, that evidence it was felt was
2 obviously desirable to go in before the panels on
3 effects.

4 THE CHAIRMAN: Okay. Well, we have no
5 objection if you put some of that in in Panel 8,
6 provided that when we get to 16, we are not going to go
7 through the methodology again, we are going to deal
8 with another aspect of the ESSA monitoring program
9 other than methodology.

10 Again we are trying -- if you are going
11 to separate it, let's make sure when we get to 16 it is
12 in fact separated.

13 MR. FREIDIN: I heard you on this a long
14 time ago, Mr. Chairman, and it is my intention not to
15 repeat the evidence of the methodology in Panel 16.

16 THE CHAIRMAN: Okay.

17 MR. FREIDIN: I may have forgotten about
18 it by then.

19 THE CHAIRMAN: We probably won't. Okay.

20 MS. SWENARCHUK: Could I just have a
21 point of clarification?

22 THE CHAIRMAN: Sure.

23 MS. SWENARCHUK: Is Mr. Freidin saying
24 then that Mr. McNamee is there only to deal with the
25 methodology of the study and not any of the other

1 issues, the results of the study, the monitoring
2 program itself in this panel? Is he going to be back
3 later to deal with all the rest?

4 MR. FREIDIN: Mr. McNamee will not be
5 back to deal with the monitoring program which is being
6 developed. The recommendations made by Mr. McNamee
7 through that report were given to the Ministry of the
8 Environment -- pardon me, to the Ministry of Natural
9 Resources and in Panel 16 the Ministry of Natural
10 Resources will say what they have done since receiving
11 those recommendations which arose out of that ESSA
12 project.

13 THE CHAIRMAN: Yes, but how does that
14 preclude the parties from wanting to cross-examine Mr.
15 McNamee on more than just telling you what methodology
16 was used?

17 I mean, he had a rather important role to
18 play in terms of the monitoring program and to put him
19 on in 8 and not have him available in 16 does not --
20 does that not put the parties at a disadvantage, not
21 being able to cross-examine him on the effects in Panel
22 8?

23 MR. FREIDIN: Well, I guess you better --
24 more than just one point in your comment, Mr. Chairman.

25 I don't believe the parties will be

1 prejudiced -- well, I think when you hear the
2 evidence - and this is one of the reasons I think it is
3 important for Mr. McNamee to give the evidence as
4 opposed to just leaving it purely in a written
5 fashion - when you hear had evidence he will clearly
6 indicate where that dividing line is between the
7 project that he was involved in and the development of
8 a monitoring program.

9 Now, you indicated that the ESSA project
10 was in fact the development of a monitoring program.
11 It was something which was necessary as a lead up to
12 deciding what might be the subject matter of a research
13 or monitoring program, but it was not the designing, it
14 wasn't -- it was never intended as being, taken as a
15 whole, the methodology and the development of a
16 monitoring program. He will not indicate what the
17 Ministry is going to do as a result of the results of
18 that ESSA project.

19 So, it is not -- his evidence in Panel 8
20 is not evidence of the monitoring program, it is the
21 information which was pulled together through the
22 process which he will describe, the conclusions and
23 recommendations which were addressed by the Ministry in
24 Panel 16 in developing a monitoring program which will
25 be explained in 16.

1 Now, to the extent of people
2 cross-examining on effects, the hypotheses which are
3 identified and the relationships which were identified
4 were the result of the process or the methodology which
5 Mr. --

6 THE CHAIRMAN: Yes, but why isn't it fair
7 to have his comments on what the Ministry ended up
8 doing? He suggested what the methodology should or
9 should not be, the Ministry took it from there,
10 supposedly from what you are saying, and designed a
11 program which is going to be discussed fully in 16.

12 But why is it beyond the limits of
13 cross-examination of this witness to say that you are
14 aware - I assume he is aware what the Ministry has done
15 with his recommendations, or are you saying he isn't
16 aware?

17 MR. FREIDIN: He may not -- I don't
18 believe he is fully enough aware of what the Ministry
19 is proposing to do or planning to do. I make that
20 comment. He might be in two weeks and I am going to
21 take your comments and take the comments of other
22 people -- well, I take your comments, I think you are
23 the only person who made this particular point.

24 I will take those comments into account
25 and if, in fact, I can ask Mr. McNamee that and if he

1 feels he has got sufficient knowledge of that to make
2 that comment, I will ask him.

3 THE CHAIRMAN: Okay. Mr. Campbell.

4 MR. CAMPBELL: I am not sure of the need
5 that I have to address this matter, but I would just
6 like to be perfectly clear that in this whole area of
7 guidelines and so on that there are sort of three basic
8 questions which need to be addressed.

9 First of all, effects -- prediction of
10 effects; secondly, the effectiveness of the guidelines
11 and various other aspects of the decision-making
12 framework in addressing those effects; and, thirdly,
13 compliance.

14 And it is only really the third area that
15 I see as being in the later panel. I think it is
16 important, for the very reasons that Mr. Freidin has
17 pointed out, to go through this methodology to
18 understand the basis on which effects are being
19 predicted and guidelines have been developed which, in
20 the proponent's view, are effective in avoiding
21 environmental impacts.

22 So I think the confusion, Mr. Chairman,
23 seems to be one that relates to the question of the
24 scope of ESSA's work and it goes far beyond, in my
25 submission, monitoring questions.

1 It is critical at the front end as well
2 because it helps us define and understand the effects
3 that are predicted in relation to the activities
4 associated with this undertaking, therefore, I feel it
5 is well placed in the order of presentation.

6 MR. FREIDIN: Sure and I think the
7 questions about 13 hypotheses made, if you would want
8 to ask him: What in fact those hypotheses are, where
9 is the information gap, why don't you have enough
10 knowledge in relation to this particular hypothesis in
11 terms of effects and activities, that is all fair game.

12 THE CHAIRMAN: And that will be dealt
13 with in this panel?

14 MR. FREIDIN: Well, Mr. McNamee is there,
15 I am going to have to go through the methodology, he
16 will take you through one or two examples in order to
17 save time on how to read those graphs and things, but
18 we are not going to go through all 13 of them and
19 identify each one of them in detail.

20 Mr. Campbell, did you suggest that it is
21 your understanding that effectiveness of guidelines
22 will not be a subject matter of Panel 16?

23 MR. CAMPBELL: No, I mean, something
24 that -- some program that addresses an assessment of
25 the effectiveness from a monitoring viewpoint

1 obviously, at least in my sense of it, is very
2 important in that panel.

3 All I am saying is that if you accept my
4 sort of three classifications, it is quite clear to me
5 that the ESSA work addresses both the identification of
6 effects and is part of a process which puts in place a
7 decision-making framework and particular steps and
8 initiatives on behalf of the Ministry of Natural
9 Resources which are designed to be effective in
10 achieving environmental protection objectives.

11 Both to that extent -- both of those
12 things I think are, in my sense of the flow of the
13 evidence, are important to deal with at this time and
14 are not and should not be considered to be delayed to
15 one appearance later.

16 MR. FREIDIN: I am sorry, I am not sure I
17 understood everything that Mr. Campbell said, but there
18 is a connection between the effectiveness monitoring
19 program which will be explained in 16 and the evidence
20 in Panel No. 8 to the extent that the monitoring
21 program being developed and which will be spoken to in
22 16 is intended to address recommendations made in the
23 ESSA study.

24 The monitoring program is designed to
25 deal with those areas where the ESSA project identified

1 a lack of clear understanding or consensus as to what
2 the linkages are between certain causes and effects.
3 They are linked in that way and, to the extent that
4 witnesses or people want to understand the ESSA project
5 for the purpose of understanding the monitoring
6 program, that is fine, I have no problems with that.

7 THE CHAIRMAN: Ms. Swenarchuk?

8 MS. SWENARCHUK: Couldn't this be solved
9 if Mr. Freidin would agree to have Mr. McNamee
10 available in Panel 16 in case some of us have questions
11 relating to these two different aspects, otherwise we
12 are in the position of thinking that we better put
13 everything to him in this panel because we are not
14 going to have another opportunity?

15 THE CHAIRMAN: That is a very real
16 probability, Mr. Freidin, because here is somebody that
17 is going to be dealing with it at the front end, you
18 are going to be dealing with it in a slightly different
19 aspect in Panel 16 and you have indicated that in fact
20 Mr. McNamee may not be available in Panel 16.

21 If I were counsel for one of the parties
22 dealing with Mr. McNamee, I would be concerned that
23 this may be the last chance I get to put all the
24 questions I want to ask him relating to the whole of
25 the study and the monitoring program itself.

1 And, therefore, I think we are going to
2 be faced with lengthy cross-examinations unless you
3 might, at this stage, give assurances that he might
4 reappear later on to pick up anything that can be left
5 to that panel?

6 MR. FREIDIN: Well, I would ask that I
7 not be asked to give you that assurance right now, but
8 I will give you...

9 THE CHAIRMAN: No, not right now but when
10 we get to Panel 8.

11 MR. FREIDIN: Yes, I think I will have to
12 deal with that one.

13 THE CHAIRMAN: Okay.

14 MR. HUNTER: Mr. Chairman, Mr. McGibbon
15 had advised me that he had presumed that McNamee would
16 deal with the methodology and the effectiveness of the
17 methodology - Mr. Campbell already touched on this.

18 I presumed that we would be dealing with
19 him on separate panels, accordingly we will be dealing
20 with the effectiveness of the methodology in Panel 8.

21 THE CHAIRMAN: Let's wait as well for Mr.
22 Freidin to indicate, at least. If he undertakes to
23 recall him in 16 and wants to leave it until then, then
24 there is a possibility we can deal with that aspect of
25 it in 16.

1 But let's wait and see what he chooses to
2 do on January 30th.

3 MR. WILLIAMS: Mr. Chairman, I concur
4 completely with your last observations for the
5 necessity of having Mr. McNamee available to deal with
6 this report regardless of which panel has dealt with it
7 and dealt with him.

8 And the wisdom of splitting up, I don't
9 argue that point, but certainly the necessity of having
10 the main author there throughout the process, I think,
11 is critically important.

12 THE CHAIRMAN: Well, I think we can leave
13 it now. Mr. Freidin has certainly received the views
14 of the Board and the parties on that and now it is up
15 to him to decide what he wants to do at this stage.

16 Let's go on to paragraph 6.

17 MR. FREIDIN: If I just might. I would
18 hope that counsel would in fact cross-examine Mr.
19 McNamee, however, on the evidence that he does give in
20 Panel 8 when he gives it, you know, in Panel 8 as
21 opposed to sort of holding all their cards close to
22 their vest and saying: Well, he is coming back in 16
23 so we won't ask him any questions now.

24 I have indicated the way that the
25 proponent's case is set up and I don't believe that by

1 undertaking to call Mr. McNamee in 16, which is the
2 fact that I just stated, sort of play it to close to
3 the vest and try and do in 16 what they probably more
4 properly should do in 8.

5 THE CHAIRMAN: I think that is a fair
6 comment provided, of course, in 16 you deal with
7 something that is different than Panel 8?

8 MR. FREIDIN: We will.

9 THE CHAIRMAN: Good. Paragraph 6.

10 It was the Board's feeling that with
11 paragraph 6, again, some of these items have been dealt
12 with in previous panels but there are other things that
13 haven't been dealt with and perhaps this might be a
14 convenient time, Mr. Freidin, to ask you whether or not
15 FMA obligations and specific legal obligations are
16 going to be discussed in this panel -- sorry, under
17 this issue and with this panel?

18 You talk about: There may be other legal
19 obligations. Ones which come to mind to the Board are
20 obligations which may arise under FMA agreements
21 themselves or other types of contractual arrangements
22 as opposed to obligations arising under some of the
23 legislation, some of which we have already covered.

24 So it sort of depends on what you intend
25 to do with this issue.

1 I am sorry, before we go, I am just
2 advised by my colleagues that I might have missed issue
3 5 -- or paragraph 5. Just going back for a moment, we
4 take it that the subsequent panels referred to will be
5 revealed by the end of January? In other words, all of
6 the witness statements for all of the panels will be in
7 the hands of all parties by the end of January and we
8 should be in a position to ascertain the complete
9 overview of the Ministry's case by the end of January
10 and, therefore, we all should have a view as to what
11 will be addressed in subsequent panels.

12 So it just seemed to us, when looking at
13 this, that the proponent makes the statement that
14 subsequent panels will describe how much guidance and
15 direction is used and, after looking at all of the
16 witness statements which have been delivered by the end
17 of January, we should be able to ascertain if that is
18 the case.

19 I don't think much more really has to be
20 said on this paragraph.

21 Going to paragraph 6, where I left off a
22 moment ago. Is it your intention, Mr. Freidin, to deal
23 with FMA agreements with this panel?

24 MR. FREIDIN: No.

25 THE CHAIRMAN: Or with any panel?

1 MR. FREIDIN: It is not the intention to
2 deal with it in this panel. There is some evidence in
3 Panel 15 which deals with where there are -- well,
4 dealing with some of the issues which have come up to
5 date in relation to the forest management agreements.

6 We didn't intend in 15 to sort of file
7 FMA agreements and go through them paragraph by
8 paragraph. There are certain issues which have arisen
9 which deal with FMAs as to whether they are dealt with
10 differently or not in relation to certain matters.
11 They will be addressed in 15, but not before then.

12 Now, whether in fact it is in the view of
13 the parties or the view of the Board, I suppose, it
14 answers all the questions they have about FMA
15 agreements, then to that extent I would be pleased to
16 obviously be in receipt of their views and the Board's
17 view to take into, you know, consideration as to
18 whether or not we feel we want to call more evidence.

19 THE CHAIRMAN: Well, it is a matter of
20 where you want to deal with it really. I mean, what it
21 comes down to is we have dealt with, as I recall, in
22 the first four panels to a large extent with various
23 types of legal obligations and made reference to the
24 various legislation that affects timber management
25 planning and made reference to various types of

1 obligations that arise under that legislation.

2 What we wanted to know is: How
3 extensively do you intend to go into it in this panel?

4 MR. FREIDIN: Not extensively at all. I
5 mean, if I'm only go to take a day or a day and a half
6 to deal with all of this evidence, I am not going into
7 anything in great detail on this panel.

8 MR. HUNTER: Mr. Chairman, in fairness,
9 so that my friend has no surprises, you may refer to
10 Question 4 of our interrogatory. We specifically ask
11 the question as to the nature of other legal agreements
12 which will impact on filing and we have received an
13 answer to that which is found in Answer (c). If you
14 look at Question 4 and question (c):

15 "Please identify the kind of contracts
16 and agreements that contain legal
17 obligations that must be considered."

18 And we certainly intended to examine at
19 some length on the response of the Ministry to that
20 question, both with respect to FMAs and to FMUs as
21 well.

22 MR. WILLIAMS: Mr. Chairman, again we
23 seem to be paralleling the approach that Mr. Hunter is
24 taking to this. It is our view that again the other
25 preceding Panels 5 and 6 have been leading up to this

1 panel which is one that is most specific in dealing
2 with the wide variety of programs and directives that
3 deal with non-timber issues that relate in a very
4 important way to timber activity.

5 And we have heard throughout the earlier
6 panels through witness evidence adduced that the FMAs
7 take into consideration all of these non-timber issues
8 and we seem to have arrived at that central point where
9 we have a right to be asking: Show us.

10 And there is legislation dealing with
11 non-timber issues too that I think the Board has to be
12 cognizant of and appreciate and understand how it
13 influences the non-timber activities which in turn
14 impact upon timber activities and the FMA agreements
15 are central to it all.

16 THE CHAIRMAN: Well, fair enough, Mr.
17 Williams. I don't think a lot has been said on the FMA
18 themselves. There has been references of course by Mr.
19 Armson in the course of thje evidence but not a lot has
20 been said on FMAs.

21 But the other hand, there has been a fair
22 bit said on some of the other things mentioned in this
23 paragraph. We had one panel with Mr. Crystal and
24 others that dealt with fairly extensively the policies
25 regarding native issues and how they have been dealt

1 with to some extent.

2 We have had the same thing from, I think
3 it was Mr. Kendrick and some others, in terms of other
4 policies dealing with non-timber resources and
5 interests.

6 Certainly we have had evidence dealing
7 with tourism and policies with regards to the
8 outfitters and what not in other panels and all we are
9 suggesting is, is that we hope we are not getting into,
10 with this particular inclusion here, of a repeat of
11 evidence that has previously been given and
12 cross-examination that has previously been made with
13 respect to those issues which have been dealt with by
14 other panels.

15 You know, the Board fully realizes that a
16 lot of these things can't be just neatly slotted into
17 one panel or another never to be referred to again. We
18 realize it is going to come up from time to time in
19 subsequent panels, but what we do want to avoid is
20 going through extensive oral direct examinations and
21 cross-examinations on issues that have already been
22 canvassed.

23 MR. WILLIAMS: Well, Mr. Chairman, I
24 think this is the first opportunity, since probably
25 Panel 1, where there has been any involvement or

1 discussion about legislation other than the two Acts
2 that are identified by way of example only here, The
3 Crown Timber Act and The Environmental Assessment Act
4 and that was legislation dealing with the all important
5 native peoples' issues.

6 And, short of that, the opportunity has
7 not yet presented itself to consider other legislation
8 and how it influences and impacts on the guidelines and
9 directives dealing with the non-timber resources.

10 And until the Board has an appreciation
11 of how those resources are managed in conjunction
12 with -- or running parallel to timber management
13 activities, the Board won't have a completely full
14 picture of the broad forest management mandate that is
15 out there and imposed upon the Ministry.

16 And there is legislation - some of which
17 we have touched on - such as The Endangered Species
18 Act. Because of the time constraints that were imposed
19 on all counsel at the last panel, there were, while
20 having introduced The Game and Fish Act and the
21 Migratory Birds Convention Act, they themselves have a
22 direct influence and impact on how those non-timber
23 resources are managed and, in turn, interrelate with
24 the timber management activity itself.

25 And I think to fully appreciate all of

1 that -- those cross-currents and interactions it is
2 important to have some appreciation of that type of
3 legislation as well and so...

4 THE CHAIRMAN: With respect, Mr.
5 Williams, the Board feels it has a general appreciation
6 of some of that legislation now. We dealt with the
7 fisheries policy, the moose guidelines; we dealt with
8 aspects of the migratory bird legislation and things
9 like that.

10 All we are saying is, is that we don't
11 want to have another generalized treatment of the same
12 legislation when, in fact, aspects of this very
13 legislation might be dealt with specifically when it
14 relates to the activities that we are going to be
15 dealing with in subsequent panels.

16 And I think we have to draw some kind of
17 fine line here into repeating much of what came in in
18 panels -- two or three panels ago.

19 MR. WILLIAMS: Well, I have just
20 identified by way of example some other statutes that
21 have not been dealt with at all as yet, Mr. Chairman.
22 So it is not a question of repeating, it hjas not been
23 dealt with at all.

24 THE CHAIRMAN: Well, if we are dealing
25 with new legislation that we have not heard about

1 before, then fine.

2 MR. WILLIAMS: You have heard about it,
3 it is a question of seeing how it interacts and relates
4 to the...

5 THE CHAIRMAN: Well, the proponent will
6 decide to the extent which he is going to be dealt with
7 it and you can ask the witnesses on cross-examination
8 their views on it.

9 MR. WILLIAMS: Yes.

10 THE CHAIRMAN: And then if you feel at
11 some stage this legislation hasn't been dealt with
12 properly, then you can bring it in when you give your
13 own evidence.

14 Don't forget there is another side to
15 this whole case, and the other side to this whole case
16 is those parties in opposition adducing their own
17 evidence at the appropriate time. And you may find
18 that because the proponent hasn't dealt with a
19 particular issue to your satisfaction, you may wish to
20 buttress it or supplement it by bringing in your own
21 evidence, calling your own witnesses to say that it
22 wasn't dealt with properly and here's how it should be
23 dealt with.

24 MR. WILLIAMS: I appreciate, Mr.
25 Chairman, we have the two avenues open to us and we

1 will take advantage of both, to the full extent that it
2 is appropriate.

3 THE CHAIRMAN: Mr. Edwards?

4 MR. EDWARDS: Thank you, Mr. Chairman.

5 Mr. Chairman, I can advise that with
6 respect to paragraph 6 my clients have some very
7 specific interests in finding out about other legal
8 obligations such as those arising from contracts or
9 other agreements and is proposed to question in that
10 area.

11 Just by way of example, in one of the
12 previous panels there was several pages listed in the
13 statement of evidence of the type of information which
14 is available to the MNR managers to make decisions;
15 woodflow charts, mill utilization schedules, et cetera.

16 And if one looks at that as a document
17 which represents the use of the public's trees for
18 private gain, it is our view that there ought to be
19 some public access to the contracts which control those
20 types of woodflow and that there ought to be some
21 explanation in this panel of what obligations arise
22 from these contracts, whatever they may, be whether
23 they are FMAs or whether they are third party
24 agreements, or whatever they in fact are, because the
25 statement of evidence is no more explicit than the

1 witness statement, it just as well repeats the phrase
2 contracts or other agreements.

3 THE CHAIRMAN: Well, that is why the
4 Board brought it up itself and said that it may be that
5 these other agreements referred to are FMAs or other
6 types of contractual obligations.

7 Obviously, both the Board would like to
8 know what they are, because it has been set out that
9 there are others; and if this is the appropriate time
10 that they are going to be dealt with, to deal with
11 them.

12 MR. EDWARDS: Further to that, Mr.
13 Chairman, it would be our position that the MNR's
14 position about the availability of these documents
15 ought to be expressly dealt with here.

16 If these documents exist but the only way
17 for a member of the public to get them is to go through
18 a rather expensive Freedom of Information Act
19 application, it would be our position that that is
20 perhaps not appropriate in all circumstances and we
21 would expect that the MNR should address the
22 availability of that information because it ties in
23 directly with the policy of public consultation which
24 is also specifically addressed in paragraph 6.

25 Because, without the information, the

1 public - and specifically my clients - aren't able to
2 make specific comments or criticisms. If you find out
3 that six months earlier somebody has done some damage
4 to your tourist outpost camp, if you are unable to
5 locate who was actually doing the cutting in the area,
6 it certainly curtails your ability to seek a remedy
7 and...

8 THE CHAIRMAN: Well, this is something
9 you should give some consideration to, Mr. Freidin,
10 because these questions are probably going to arise
11 when we get into this panel and deal with this issue
12 and there are certain methods to obtain certain
13 information which may not be readily available which
14 are lengthy in terms of time consuming.

15 The Board, as you are aware, also has the
16 power to either hold an in-camera type part of the
17 proceeding or receive undertakings from counsel that
18 certain information divulged will not be utilized or
19 divulged to anyone else.

20 Both methods have come up in
21 environmental hearings in the past and it may be that
22 this type of information falls into that category. I
23 think at least you should be giving it consideration as
24 to how you are going to respond to those types of
25 questions when they arise.

1 MR. FREIDIN: I take it -- well, maybe I
2 can hear from people here. Am I going to get any
3 objections from anybody if I happen to bring a witness
4 along and put him in Panel No. 8 to deal with forest
5 management agreements? -

6 THE CHAIRMAN: No, if this is where you
7 want to deal with it, that is fine. It is just that
8 you are referring to other agreements. FMAs are
9 obviously in that category and you have to deal with
10 them somewhere, I would suggest, in this hearing.

11 THE CHAIRMAN: Sorry, do you want to put
12 your thing on.

13 MS. SWENARCHUK: Only if it doesn't mean
14 another thousand pages of paper between now and the end
15 of January, that would be my concern. I am very
16 anxious to have the FMAs on the table as well, but how
17 much more material are you talking about on short
18 notice?

19 THE CHAIRMAN: Yes. I mean, we have to
20 take that into account too, Mr. Freidin, that we are
21 going back on the 30th to hear evidence and parties
22 have to have an opportunity fairly to prepare.

23 So if you are going to deal with a whole
24 new topic that you weren't otherwise going to deal with
25 in this panel, we don't want to be considering further

1 adjournments in order to allow them to absorb the
2 information.

3 MR. FREIDIN: All right. I just wanted
4 to get a sense of what the response would be to see
5 whether that was an option. I am not suggesting that
6 we are going to deal with FMAs there, if we are going
7 to deal with it in the evidence, but I just wanted to
8 be straight on that.

9 Thank you.

10 THE CHAIRMAN: I think you might as well
11 know, from the Board's perspective, we assume and would
12 suggest that it is entirely appropriate that FMAs be
13 dealt with in some detail by the end of this hearing.
14 They do play a rather important role, in our view, in
15 the overall process and, therefore, the information
16 about them has to be out on the table.

17 MR. FREIDIN: It seems that they need a
18 little demystifying.

19 MR. HUNTER: Mr. Chairman, not wanting to
20 prolong this much further, I am proceeding to prepare
21 for Panel 8 on the basis that we will cross-examine on
22 the phrase:

23 "...other legal obligations."

24 And, obviously, directly in relationship
25 to FMAs and to FMUs.

1 Now, if Mr. Freidin is going to bring a
2 witness at some later point in time to deal with all of
3- those subjects and we have that undertaking, then
4 obviously I can reduce my workload at this time, but I
5 am proceeding to prepare to proceed in
6 cross-examination on that subject and we will.

7 THE CHAIRMAN: I think it would be
8 helpful, Mr. Freidin, if you told us now, because when
9 the Board read that statement it automatically said:
10 You must be referring to FMAs or other types of
11 obligations at this point.

12 Other parties, I am quite sure, will go
13 along with Mr. Hunter's view that since this statement
14 was made in this panel that it is going to be dealt
15 with in this panel.

16 If such is not the case, then it would
17 save everybody, particularly counsel preparing for
18 Panel 8, a lot of time to leave that to a later panel,
19 if you will give the undertaking that FMAs will be
20 fully on the table in a later panel, bearing in mind,
21 Ms. Swenarchuk's concern that if not - and it is going
22 to require more documentation to be filed - that the
23 parties won't have an opportunity to prepare for Panel
24 8 in time.

25 MS. SWENARCHUK: Mr. Chairman, while Mr.

1 Freidin considers that question, could I just ask you:
2 Procedurally speaking, is it your intention to hear
3 today arguments about a possible move of MNR's case?

4 THE CHAIRMAN: I suppose we will have to
5 lay to rest once and for all that issue, because we
6 mentioned at the last session that if there was a
7 consensus from the majority of all the parties that
8 some consideration should be given to moving part of
9 MNR's case out of Thunder Bay to Toronto, we may be in
10 a position to reconsider the earlier decision.

11 I don't want this hanging over the Board
12 each time we meet. So that we are not going to revisit
13 the whole argument, we are just going to do a very
14 simple canvass of some of the parties here and see if
15 there is any major objections and see what kind of
16 consensus there is, if any.

17 If it appears that there is no consensus
18 and some of the major parties, including MNR, do not
19 wish to change the location of where they are putting
20 in their evidence, then there will be no change.

21 It was raised by you, it was commented on
22 by a couple of other parties at the last session, we
23 indicated that, you know, we are now seven, eight or
24 nine months into the hearing, maybe it is appropriate
25 to briefly reconsider that question.

1 But a lot of long-term commitments have
2 been made by a lot of parties and it doesn't take away
3 from the Board's overall sense at the beginning that
4 this is an undertaking that affects, in a large part,
5 residents of northern Ontario and, as a consequence,
6 that was one of the main criteria for choosing to hear
7 the Ministry's case in northern Ontario, with the
8 option to all other parties to present their evidence
9 in one of 14 other locations, one of which included
10 Toronto.

11 MS. SWENARCHUK: Can you just tell us
12 then how you intend to proceed on this?

13 THE CHAIRMAN: Well, I think at the end
14 of this session right here we are just going to simply
15 ask the parties whether or not there is a consensus
16 amongst you all to change location and, if there is,
17 then we will consider whether the Board, for other
18 criteria mentioned, wishes to entertain seriously a
19 change.

20 If there is no consensus, then I think
21 the Board's decision will be it remains in Thunder Bay
22 with the option of all other parties to address their
23 evidence elsewhere.

24 MS. SWENARCHUK: And do will only hear
25 further submissions on the previous criteria, if the

1 consensus exists? Is that the procedure you are
2 outlining?

3 THE CHAIRMAN: Well, let's see if we even
4 get to that point. It may be that there is objections
5 from several parties, which I think at this point will
6 forestall further discussion.

7 Once again, we are not going through all
8 the criteria to justify what the previous decision was.
9 That was the subject, quite frankly, of eight
10 preliminary meetings where we heard the views from a
11 wide variety of parties and then interjected what the
12 Board's concerns were and came up with the decision
13 that we got.

14 MR. EDWARDS: Mr. Chairman, I would ask
15 for some direction from the Board as to the timing of
16 this.

17 I will have no submissions at all on
18 Panel 9 and I am obligated to get back on an afternoon
19 flight, so I would certainly like to have the
20 opportunity to address that issue before I am gone.

21 THE CHAIRMAN: Okay. Well, we don't have
22 that far to go, I don't think, in this exercise because
23 some of these other paragraphs are to be taken
24 together, I think.

25 So I think the Board's intention is to

1 proceed along, right to the end of the scoping thing,
2 and also just deal with this one other question, plus a
3 couple of housekeeping matters and adjourn.

4 We are not planning to break for lunch
5 because we think we will be through at a very
6 reasonable hour, if that is okay.

7 Okay. Paragraph No. 7.

8 MR. FREIDIN: Perhaps I can speak to the
9 FMA matter?

10 THE CHAIRMAN: Okay.

11 MR. FREIDIN: I will advise counsel early
12 this week where FMAs will be dealt with over and above
13 what I have already indicated for Panel 15. I think
14 that it is most likely that if in fact we address it as
15 a subject matter, sort of separately from the
16 discussion of other things, it will be in Panel 15.

17 I hear Mr. Hunter, so that is why I say I
18 will advise him early this week whether 15 would be the
19 more appropriate place for him to ask his questions or
20 any specific questions he or anyone else has on forest
21 management agreements.

22 That is it.

23 THE CHAIRMAN: Okay.

24 MR. HUNTER: Thank you, Mr. Chairman.

25 THE CHAIRMAN: Paragraph No. 7.

1 The Board felt with respect to this
2 paragraph that no specific oral direct evidence might
3 be required and we feel that the Ministry's written
4 submission adequately highlights the available Ministry
5 tools and it has fairly extensive lists contained
6 within the statement.

7 And we have heard already in previous
8 panels where some of this information and where some of
9 this scientific and technical expertise from government
10 and non-government sources comes from and how it is
11 used.

12 MR. FREIDIN: Yes. Mr. Clark covered a
13 lot of this. Mr. Clark and Mr. Pier in Panel 7 and
14 that is recognized and we are not going to repeat that.

15 I think the evidence in relation to this
16 matter will primarily deal with panel -- pardon me,
17 paragraph No. 8 -- I mean, 7 and 8 are connected, but
18 it will be directed to the three types of
19 implementation manuals, again not to go into the
20 specific contents of them, but so that the Board has an
21 understanding regarding the role that the three types
22 of manuals referred to; provincial guidelines,
23 construction and operating manuals and resource
24 environmental manuals play in the larger picture.

25 THE CHAIRMAN: Okay. And then I take it

1 with this brief treatment of those three types of
2 manuals, you may be dealing with them more specifically
3 in relation to the specific activities in later panels?

4 MR. FREIDIN: Right. Now, that goes for
5 the silvicultural guides as well which are identified
6 in the EA document as provincial guidelines.

7 And yes you are correct, they will be
8 dealt with -- the appropriate place to deal with
9 questions or cross-examination of those particular
10 documents, in my view, is in relation to the panels
11 dealing with the activities because that is what those
12 documents basically address.

13 So I agree, I guess, with your comment,
14 Mr. Chairman.

15 THE CHAIRMAN: So that really covers --
16 those same comments really cover paragraphs 9 and 10;
17 is that not correct?

18 MR. FREIDIN: That is correct. Though
19 you will note that the first item in paragraph 9(a) is
20 a matter which has been raised in a number of the
21 submissions today and raised by Mr. Campbell, so that
22 is something that he will address perhaps more
23 directly, although it as well has been covered off in
24 the evidence of other panels.

25 We are going to try not to repeat the

1 considerable evidence about what is or what is not
2 mandatory here.

3 THE CHAIRMAN: Right. And, again,
4 outside of some general comments about how the
5 guidelines are themselves updated and kept current and
6 things like that, that to the Board should not take
7 very long to cover and specific questions with respect
8 to public input and other things like that might be
9 addressed when you deal with the guidelines in the
10 context of the specific activities.

11 MR. FREIDIN: I think we will deal with
12 in Panel 8 at least how these guidelines were
13 formulated and who usually gets involved in preparing
14 those kinds of implementation manuals and who in fact
15 were involved in preparing some of the ones which are
16 going to be dealt with or which have relevance to later
17 panels. So we will deal with that.

18 But then again, as I said a day to a day
19 and a half, I am not going to deal with anything in any
20 great amount of detail.

21 Perhaps while we are on that matter, if I
22 could address sort of an issue which is raised by
23 Forests for Tomorrow, I think Ministry of the
24 Environment as well and others. There is this comment
25 that they want to ask questions about the adequacy of

1 the database to apply these various documents or
2 guidelines.

3 In my submission, Mr. Chairman,
4 database -- it will be my position, depending on where
5 the cross-examination goes, that what the Ministry's
6 database is was the subject matter of a lot of
7 discussion in Panel No. 7; that was in fact one of the
8 main purposes of Panel No. 7, it dealt primarily with
9 database in relation to non-timber values.

10 The evidence in relation to the database
11 in relation to timber values was dealt with
12 extensively, in my submission, in paragraphs 2 through
13 4 which involved the FRI, the survival assessments, the
14 stocking standards. All that sort of information was
15 dealt with there. We do not intend to repeat that
16 evidence in this panel and would expect that
17 cross-examination not get into a repeat of that or that
18 evidence either.

19 I also suggest that to the extent that
20 parties are concerned about whether information or data
21 is available in relation to any specific portion of a
22 guideline; for instance, as an example, that that is
23 more appropriately again and more helpfully done for
24 the Board in the panel which deals with the specific
25 activity. If someone wants to take the position that

1 something in a silvicultural guide should -- is right
2 out to lunch, for reason A, B or C, then I think if it
3 relates to a harvest matter then they should deal with
4 that in harvest and so on down the line.

5 I think it would be better if that
6 cross-examination is put in the context of when those
7 activities are -- where decisions are made about those
8 activities and, again, there will be people on those
9 panels I think who will be able to deal with the
10 majority of their questions and that will reduce the
11 number of undertakings which will have to be given
12 which will, therefore, reduce the length of time that
13 certain issues have to wait around before they are
14 dealt with.

15 THE CHAIRMAN: Well, it is certainly the
16 Board's intention not to repeat things like the FRI
17 process which we have gone into extensively and those
18 kind of things if the Ministry, in response to a
19 question, indicates that that is the source of the
20 database.

21 It may be that if other parties are
22 dissatisfied with the extent of that database, then
23 they can bring their own evidence at the appropriate
24 time to indicate what the database should have been,
25 but we are not going to recanvass areas of the database

1 that have been previously canvassed in detail by
2 previous panels and, I agree with you, I think it would
3 be more helpful to the Board if questions respecting
4 adequacy or inadequacy of databases were dealt with in
5 relation to the specific activities.

6 MR. CAMPBELL: Mr. Chairman, if I can
7 just address this because, in part, Mr. Freidin's
8 comments were aimed at our Statement of Issues.

9 We do not intend to repeat any of the
10 cross-examinations that have taken place with respect
11 to the database, but the very real essence of how one
12 avoids inappropriate environmental effects in the
13 course of carrying out this undertaking relates to the
14 very question of how -- given that database with all
15 its strengths and limitations, how is that database
16 applied through a decision-making and planning
17 framework in order to make decisions which, in the end,
18 will be carried out on a particular piece of land with
19 very particular characteristics?

20 So that when we are bringing up these
21 issues, we are not intending to revisit the evidence as
22 to what the database in fact is, we are turning now to
23 what is going to be the heart of the case with respect
24 to what happens on the ground; which is: Given this
25 information, how do you make decisions that are going

1 to ensure that the environmental effects which result
2 are acceptable?

3 And I don't want any misunderstanding
4 about that. It is the application, it is taking that
5 database and working it through a decision-making and
6 planning framework; that is where our issues are
7 turning from this point forward.

8 THE CHAIRMAN: And there will be nothing
9 to prevent you from asking those questions of your
10 witnesses and, presumably, they will provide you with
11 the benefit of their experience and wisdom.

12 If it is not sufficient then, as I say,
13 Mr. Campbell, you can approach it from another
14 direction and that is later on.

15 MR. CAMPBELL: All right. I was just
16 concerned that anyone, in reading these questions, was
17 thinking that we were going back into identifying what
18 is or is not the databases.

19 That is not the question; the relevant
20 question is: Given that, is it adequate for the
21 decision-making process that has been outlined, and
22 does the decision-making process that has been outlined
23 effectively address the strengths and weaknesses of
24 that database.

25 Those are quite different questions, in

1 my submission, Mr. Chairman, from the simple question
2 of what data is there.

3 MR. FREIDIN: I don't believe that
4 changes my submissions as to which panels the questions
5 are more directly or more appropriately directed.

6 THE CHAIRMAN: Well, you can direct --
7 you know, parties can direct it at this panel, it may
8 be that the answer is, is that it can be better dealt
9 with by some other panel.

10 MR. FREIDIN: I just --

11 MR. CAMPBELL: Mr. Chairman...

12 MR. FREIDIN: I don't want people to be
13 taken by surprise and perhaps, if I still don't
14 understand Mr. Campbell, I guess that is one of the
15 reasons why we are here, so I can understand Mr.
16 Campbell.

17 MR. CAMPBELL: Well exactly, Mr.
18 Chairman, and Panel 8 is the decision-making framework
19 that the proponent wishes to use for making all of
20 these decisions.

21 The Panels 10 through whatever, until I
22 guess we hit 15, they are aimed at the effects of
23 activities -- their focus is the effects of activities.

24 Now, if...

25 THE CHAIRMAN: But it is also the

1 decision-making framework in the context of certain
2 activities. It is not just the effect of the
3 activities it is also, I would suggest, how decisions
4 are made relative to certain activities, whether it is
5 harvest or access roads or something like that.

6 MR. CAMPBELL: Well, in terms of a
7 specific look at the decision-making framework, that is
8 what I had understood that Panel 8 was all about, we
9 were then moving on to, in the different activities,
10 how it is applied.

11 But that transition from all of the bits
12 and pieces of the database and so on through to its
13 application to specific activities, my understanding
14 was that that is what these two panels were all about.

15 Now, if I am wrong in that, then I would
16 like to have that clarified.

17 THE CHAIRMAN: Mr. Freidin?

18 MR. FREIDIN: I think that there may be
19 some misunderstanding. The decision-making framework,
20 when I hear that term I think of -- I equate that in
21 the context of this environmental assessment to the
22 timber management planning process.

23 The process in which decisions are made
24 and where all this information which has been given to
25 date and which will be given later gets considered and

1 decisions are made, is the timber management planning
2 process.

3 This panel, although it is headed
4 Resource Management Decision-Making Limitation of
5 Effects is meant to describe to a large extent what Mr.
6 Clark dealt with in Panel No. 7, is that when you are
7 making decisions - including decisions within the
8 context of timber management under the timber
9 management planning process - you have got to make
10 those decisions within a certain context and there are
11 provincial guidelines, there are resource manuals,
12 there are silvicultural guides, there are legal
13 obligations.

14 An understanding of what those things are
15 in a general way is important, so that when we do get
16 down to the actual activities and people making
17 decisions about them, we get into Panel 15 and deal
18 with the evidence of how you go about making those
19 discussion. You have to have an understanding of what
20 provincial guidelines are and what it means that they
21 are mandatory, or their use is mandatory and that sort
22 of thing.

23 So I think I hear Mr. Campbell believing
24 that Panel 8 is more akin to what I have described what
25 I anticipate to be the subject matter of Panel No. 15.

1 MR. CAMPBELL: That may be and I am quite
2 prepared to be guided on this matter by both Mr.
3 Freidin and, of course, the Board.

4 If what we are talking about in Panel 8
5 is simply an enumeration and explanation of what the
6 different things are, that is fine. I just don't want
7 to find myself in the position that come Panel 15 when
8 we raise a concern, if we do, about: How does this
9 database and this guideline ensure in a demonstrable
10 way that environmental protection objectives are going
11 to be achieved, that that -- I can have a full and
12 complete discussion of that issue with the witnesses
13 without bumping into them saying: Well, that
14 decision-making framework was in Panel 8.

15 THE CHAIRMAN: No, no, but in the light
16 of what; in the light of a particular activity, or just
17 in general terms?

18 You see, the problem is, to some extent,
19 Mr. Campbell, that what we have before us is a design
20 of a planning process but it is focused, I would
21 suggest, in the light of certain activities. The four
22 basic activities have been set forward: Harvesting,
23 access roads, reforestation, maintenance, those kinds
24 of things.

25 MR. CAMPBELL: And, Mr. Chairman, one

1 cannot help but read Panel 9 without coming to the
2 absolute clear understanding that Dr. Armson has just
3 laid out as clearly as could be that if one is going to
4 assess environmental impacts you have to look at the
5 flow of activities that occur on a particular piece of
6 geography from the very moment that the planning starts
7 right through the end of the regeneration cycle.

8 I agree, it is a convenient way to look
9 at specific activities, but there is a sum that is at
10 least equal to the individual parts that we are looking
11 at, as Dr. Armson evidence makes wonderfully clear.

12 THE CHAIRMAN: Mr. Freidin?

13 MR. FREIDIN: I think it is going to be a
14 difficult line to draw throughout this whole
15 environmental assessment and not only with the
16 proponent's evidence, but in terms of the sort of
17 information which is available or is not available in
18 order to apply, for instance, a guideline.

19 I think that is a type of question which
20 is more appropriately directed to each panel. For
21 instance, Mr. Allen -- Dr. Allen who is a witness in
22 Panel No. 10 is a fisheries biologist - in fact he was
23 the prime author of the guidelines in relation to fish
24 habitat.

25 Now, to the extent that the Ministry is

1 or is not, or does or does not believe it has adequate
2 information or a system in place to go out and get
3 adequate information to deal with the concern of the
4 fisheries biologist in terms of the effect of timber
5 management, Dr. Allen is the person to ask that
6 question. He is the person who that question should be
7 directed to and the same can go for the moose habitat
8 guidelines and all the other ones.

9 I apologize if I am taking the time of
10 everyone here to have a discussion between Mr. Campbell
11 and myself, but I think hopefully it will be helpful to
12 everybody just so they know where the Ministry is going
13 in terms of its evidence.

14 THE CHAIRMAN: Well, that's right. I
15 mean, what we are hoping to ascertain from this session
16 is what are you actually going to be addressing in
17 Panel 8 and what can the parties expect to be able to
18 cross-examine on, or what are they going to have to
19 wait for a subsequent panel?

20 Do you want to add anything, Mr. Hunter?

21 MR. HUNTER: No. I was always intrigued
22 by Mr. Campbell's attempt to bring rationality to the
23 order of the panels.

24 I am deeply troubled because I go right
25 back to what I said right at the beginning: At what

1 stage -- I am very fearful that we are going to get
2 into Panels 12, 13, 14 and 15 and we are going to start
3 to ask very technical questions and then we are going
4 to say: Now, Dr. so and so how does this relate to the
5 decision-making process? I can't answer that, I am a
6 fish biologist, I am going to tell you what the
7 standards are.

8 Whereas for the first seven or eight
9 panels we have said don't ask about impact of the
10 generalist or the decision-maker. We are here to
11 understand the overall philosophy and direction of
12 decision making without any relationship to the
13 substantive issues.

14 Then we are going to get into the
15 substantive issues and the witnesses are going to say:
16 Hey, that is not my problem. My problem is to put the
17 data before the decision-maker, I can't answer those
18 questions and, between those, there will be a
19 phenomenal hiatus, meaning there will be no integration
20 between the process -- the decision-making activity and
21 the substantive activity.

22 And that is going to be a very
23 substantial problem. We are facing it right now.

24 THE CHAIRMAN: Well, if it appears
25 that --

1 MR. HUNTER: We are facing it right now.

2 THE CHAIRMAN: If it appears, Mr. Hunter,
3 at the end of the proponent's case that we are in that
4 position, then the proponent may have some hard
5 choices.

6 First of all, he can decide at that stage
7 to do nothing and hear the cases of the opposition and
8 then decide that he has to try somehow to reconcile it
9 in reply, or he can decide at the end of Panel 15 or 16
10 or whenever that he needs a wrap-up type of panel that
11 pulls the two aspects together, the specific and the
12 general. I don't know.

13 But he has indicated on behalf of his
14 client how he intends to proceed and what the evidence
15 of these panels are in fact going to address and what
16 should properly be left until a later date.

17 If in fact you do get to the position
18 that when you pose these questions to a witness in
19 Panel 15, for example, and they say they can't answer
20 and that is not their concern, and yet those same
21 questions which were posed to somebody in Panel 8 with
22 replies to say: Not here, do it later; well then, you
23 have got some good arguments to make, I would suggest,
24 either in your own case or in argument as to where the
25 Board should go.

1 MR. HUNTER: Well, I am trying to do
2 that, sir, in the context of the difficulties I am
3 having in terms of working with Panel 8 because I think
4 we are right on that fulcrum right now, and where
5 should one be putting their emphasis: On the process
6 or on the substance?

7 My job, I think, is to try to pull them
8 together now at this particular point in time.

9 MR. FREIDIN: All I can just say is:
10 Let's wait and see how it goes. You have my position.

11 THE CHAIRMAN: Okay. Well, I think what
12 is helpful in this session is that before we get into
13 Panel 8 you are at least hearing, Mr. Freidin, some of
14 the concerns raised by some of the parties, you are not
15 hearing it for the first time when we are actually in
16 Panel 8, you are hearing it ahead of time.

17 You may wish to decide between now and
18 then to respond to some of these concerns in some way
19 and you may decide not to respond and present your
20 evidence in the way you intended to present it prior to
21 the session.

22 What we are hoping to do by this session
23 is to focus in, for everybody including the Board, on
24 some of the issues that are really in dispute.

25 And, obviously, Mr. Hunter, this is I

1 think one of the issues - although it is not so much
2 mentioned in terms of the Statement of Issues, but it
3 is an issue in this hearing - where do you draw
4 together the general overall planning process and
5 somehow bring in the specifics relating to the four or
6 so activities that we are dealing with in the main, and
7 I think it is a concern.

8 MR. HUNTER: Thank you, Mr. Chairman.

9 MS. SWENARCHUK: Can I just add one last
10 comment to that? If you recall the opening statement
11 that Forests for Tomorrow presented to the Board last
12 May, we referred to what we considered to be major gaps
13 and one of the gaps is between the planning process as
14 outlined in the manuals, et cetera, and what actually
15 happens on the ground.

16 And my concern, even when I look at Panel
17 10 for example, is that that document too, dealing with
18 harvest, remains to a considerable extent at the level
19 of theory as opposed to practice, and I think even when
20 we get into the activities we are still going to have
21 this problem of actually getting right to the ground on
22 exactly what happens.

23 THE CHAIRMAN: Well, I am sure those
24 concerns will form a substantial part of the parties in
25 opposition's case and that is what an application like

1 this is all about; somebody puts forward a proposal and
2 others decide that the proposal, for one reason or
3 another, may or may not be adequate and has holes and
4 some of those holes should be plugged.

5 And ultimately, I would suggest, that the
6 Board's decision will attempt to do just that in some
7 fashion.

8 MR. WILLIAMS: Well, Mr. Chairman,
9 following the same theme: Again, we have the same
10 difficulty as other counsel are expressing as to how we
11 can have a better appreciation of the individual
12 activities as will be described on the following panels
13 without first having some appreciation as to how the
14 approach, the database and philosophy are applied to
15 those activities and to hear how they are applied after
16 hearing about the activities, I don't think, gives us
17 as whole an appreciation of how the activities are
18 carried out in a meaningful way and in an organized
19 way.

20 THE CHAIRMAN: But in hearing about those
21 activities, I would suggest that you are going to hear,
22 to some extent, how these databases are in fact
23 applied.

24 MR. WILLIAMS: Yes, no question.

25 But, again, do we have the broad picture

1 before us in going in to deal with those activities one
2 after another. I am not -- I am fearful that we won't
3 have as comprehensive a picture as necessary to best
4 appreciate how those activities will be carried out
5 applying these basic formulae and programs and so I
6 can't see how we can completely ignore trying to
7 grapple with the application of database prior to going
8 in to dealing with those activities and leaving it to
9 Panel 15.

10 I don't think it is entirely helpful to
11 us to take them in that sequence. I think there has to
12 be some compromising, if you will, to let us get closer
13 to an appreciation of the application of the process to
14 the activities.

15 THE CHAIRMAN: Well, I don't think the
16 Board can say more, Mr. Williams, than to say: I think
17 Mr. Freidin is appreciative of some of the comments
18 today. Whether or not he will respond to those
19 comments in this panel is really up to Mr. Freidin.

20 If he decides that no, the witnesses on
21 this panel cannot answer some of these generalized
22 questions and those same questions will have to be put
23 to a later panel, then I think the parties will have to
24 wait until a later panel and put ~~those~~ questions.

25 If you get the answer at that stage that

1 those witnesses in a later panel cannot answer the
2 questions, well then, you are left with the position of
3 either bringing in your own evidence, providing some of
4 those answers, or providing evidence to show that those
5 answers should have in fact been provided, or Mr.
6 Freidin at some stage is going to have to try and tie
7 the two together.

8 But the Board can't, and I don't think it
9 is proper for the Board to, order Mr. Freidin to
10 address that issue in this panel if he feels it should
11 be better addressed elsewhere and in a different
12 context.

13 Once again, I think there is some
14 difficulty that all parties have to appreciate in that
15 process and that is that the Environmental Assessment
16 is proponent generated; the Environmental Assessment is
17 an attempt by one party to put forward its proposal as
18 to how to address a particular problem and that is what
19 the Ministry has done.

20 Now, there is nothing to suggest that
21 other parties won't have other ways of approaching that
22 problem and they are given the opportunity in the
23 hearing process to put their questions and to put in
24 evidence at a later stage as to why their position
25 should be held over and above the position put in by

1 the proponent.

2 I think if each one of us attempted this
3 application at the outset in our own way to structure a
4 hearing and an application of the type we have got
5 before us, I would suggest to you we would not have
6 many that resembled each other and the best we can do
7 at these hearings, I think, is to canvass all of the
8 issues, to take a look at all the concerns of all the
9 parties and, as best we can, address those concerns and
10 the Board will apply its mind at the end of the process
11 to coming up with an appropriate decision.

12 But I don't think it is for the Board to
13 order a proponent to put in its case in a particular
14 fashion or to cover this issue or that issue in a way
15 which that proponent feels is going to be covered but
16 in a different manner.

17 MR. WILLIAMS: I don't think anyone is
18 suggesting that they are looking for an order from the
19 Board, Mr. Chairman. I think it is probably a fact
20 that from the very early stages of the hearings we kept
21 hearing so often that the panacea was Panel 8 and to
22 have patience when we are trying to develop an
23 understanding of the process in its broadly based
24 context.

25 And Panel 8 was so often referred to as

1 the testing ground and now we hear that it is really
2 Panel 15, and the application of the database is, as
3 Mr. Campbell said, central to the issue and I think
4 especially with the ESSA report before us, which gives
5 us a whole new dimension to the process or potential
6 dimension.

7 All of these things, I think, are going
8 to require considerable exploration during that panel
9 and I just don't want to feel that by leaving some of
10 it aside until Panel 15 that we go into the activity
11 panels thereafter, having not a full appreciation of
12 how the central process is applied to those activities
13 so that we can appreciate whether or not they have been
14 adequately developed or otherwise.

15 MR. CAMPBELL: Mr. Chairman, lest my
16 remarks were misunderstood. This transition is
17 important in the sense of applying the database and
18 through a decision-making process to achieve certain
19 results, but I don't want to be taken as saying that it
20 has to occur now.

21 I just want to understand that if that is
22 Panel 15 material, fine. But given the title of this
23 panel, I had understood we were going a little farther
24 in illustrating how a decision-making and management
25 structure resulted in limitation of effects then

1 appears to be the case.

2 It is entirely Mr. Freidin's choice. I
3 think this discussion though is very helpful in terms
4 of defining the boundaries of which goes where. That
5 is the only context within which I raise it.

6 MR. FREIDIN: My only response is it may
7 not be inadvisable for Mr. -- to assure there is no
8 misunderstanding between the two of us, that he perhaps
9 ask some of the questions that he feels are
10 appropriate; I mean, don't hold back, in case there is
11 a misunderstanding between us and I will tell you
12 whether there is a misunderstanding when I think there
13 is one.

14 Because I don't want anyone to sort of
15 misinterpret what I have said today and not even enter
16 into an examination which they feel is appropriate for
17 No. 8 unless they are fairly certain that they
18 understand what I have said.

19 THE CHAIRMAN: Okay. I am not sure--

20 MR. FREIDIN: What I just said.

21 THE CHAIRMAN: --any of us understood any
22 of that, Mr. Freidin. But let's cut this short at this
23 point, I don't think we can usefully explore it more.

24 I think you are aware of some of the
25 concerns expressed by some of the parties here and you

1 can conduct your putting forward of Panel 8's evidence
2 in the manner you see fit and the other parties are at
3 liberty to ask the appropriate questions they think are
4 necessary to ask of this panel. Whether you will get
5 the answers in this panel remains to be seen.

6 Okay. I think if we take a look at the
7 rest of the paragraphs once again we are into much the
8 same position; that some of the issues for instance in
9 paragraphs 11, 12, 13 and 15 may well be dealt with in
10 later panels and it appeared to us that there is an
11 indication that some of these will in fact be dealt
12 with more specifically in later panels.

13 Just going back for a minute to 9 and 10,
14 since I seem to have skipped those. Again, I think we
15 have covered some aspects of these already.

16 The Board felt that there wouldn't be a
17 need for a large amount of direct examination, although
18 there may well be cross-examination on any aspects of
19 this. Again, we have covered some of these items in
20 previous panels as well and will cover them in future
21 panels.

22 I think if all of us have been keeping
23 track, and none of us have to the extent of knowing
24 exactly what Panel 15 is going to cover entirely, it
25 seems to be growing by the day or minute, whatever has

1 been left out of this case. At any point. Will
2 probably be dealt with by Panel 15.

3 MR. FREIDIN: I guess everybody will know
4 by the end of the month?

5 THE CHAIRMAN: That's right.

6 And with respect to Panels 14, 16 and 17,
7 again, monitoring will be dealt with in these panels
8 and I think that in itself is going to be a fairly
9 important topic and probably one that is going to take
10 some time to cover.

11 So that it seems to the Board that
12 questions dealing with monitoring, other than what we
13 have discussed already with regards to Panel 8, could
14 better be left to the monitoring panel; that is, both
15 direct and cross-examination.

16 Okay, ladies and gentlemen, that is
17 basically what the Board wanted to cover in terms of
18 this kind of session, to have an appreciation on the
19 table of what issues parties are concerned about and to
20 try and narrow down what, in fact, the panel will deal
21 with.

22 And we certainly have found this kind of
23 session to be helpful because it forces all of us to
24 concentrate on the written documentation before us and
25 to try and identify within that documentation what the

1 issues are. And we intend to continue on with these
2 sessions.

3 We are suggesting that we have to set
4 some times because of the fact that there seemed to
5 have been a misunderstanding, I can see easily how it
6 could arise with respect to Panel 9. Panel 9 was
7 included in the last order regarding scoping, because
8 in fact we did not think that Panel 10's evidence would
9 be that lengthy in terms of days, and we didn't want
10 any kind of holdup between the time we ended Panel 9's
11 evidence we had a scoping session -- sorry, Panel 8's
12 evidence we had a scoping session for Panel 9.

13 We are suggesting that the scoping
14 session for Panel 9, one like this - and I would
15 suggest it won't take half as long because we will have
16 an idea of what is involved - should be set for the
17 evening of January 30th. And, again, we are not going
18 to take very long, we expect to be able to go through
19 that in no more than an hour at the outside.

20 And once again, Mr. Freidin, the reason
21 for that is, is that we don't know when you are going
22 to end Panel 8 and we don't want any gap inbetween the
23 end of Panel 8 and the start of Panel 9 and yet we want
24 to allow the party calling the evidence some time to
25 adjust the presentation to what may or may not arise

1 out of the scoping session itself.

2 We are suggesting that the date for
3 submissions of Statements of Issue for Panels 10 and 11
4 be January 30th.

5 MR. FREIDIN: I am sorry, what will be
6 January the 30th?

7 THE CHAIRMAN: The submission date for
8 Statements of Issue for those two panels.

9 MR. FREIDIN: For 10 and 11?

10 THE CHAIRMAN: 10 and 11. Now, 10 was
11 handed out, as you are aware, I think before we broke
12 in November and 11 was delivered - I cannot remember
13 the precise date - but it is also in the hands of the
14 parties and has been for a while.

15 And then we will set a scoping session
16 with respect to those two panels at a subsequent date,
17 probably we will set the date for that the first week
18 when we get back and have an understanding of where we
19 are going.

20 MR. FREIDIN: I know everyone is busy,
21 but if somebody gets their issues on 10 and 11
22 formulated before January the 30th, I would certainly
23 appreciate them, because once I start leading evidence
24 in 8 it is going to be very difficult for me to sit
25 down with the appropriate people to consider what

1 changes might happen to 10 when I know I have got to
2 deal with 9 and then 10.

3 Hopefully that problem is going to become
4 less of a problem once all of our information is
5 available and, therefore, more of the lawyers who are
6 involved on behalf of the Ministry are involved, but
7 that is going to be a problem on 10 and 11 in any
8 event. So I just put that out as a general request.

9 THE CHAIRMAN: Well again, I think it is
10 important that the parties do their best to comply with
11 the time lines that the Board is going to set because a
12 lot of other things depend on these specific dates;
13 that is, when we will be able to start the actual panel
14 itself and again, we feel that we want to try these
15 scoping exercises for the next few panels because we do
16 feel that they are helpful and we want to see how they
17 can be better refined and, hopefully as we go along,
18 they will take less and less time to go through and the
19 parties will become more and more precise with respect
20 to the identification and focusing upon issues.

21 MS. SWENARCHUK: Mr. Chairman, may I just
22 point out really a logistical problem which I think all
23 the other parties are having as well.

24 As regards the January 30th date, perhaps
25 it has to stand, I just want to point out that

1 certainly on our side and maybe other sides there is
2 going to be a real minimum of time that we can commit
3 to Statements of Issues given, you know, everything is
4 commencing on January 30th and given particularly that
5 we received I think about 4,000 pages of material since
6 the end of December and there are staggered dates for
7 interrogatories; the 20th this month, the 1st of
8 February, the 15th, the end of February.

9 You have said that MNR is not obliged to
10 answer questions that are not filed on those dates.
11 MNR has been cooperative in answering interrogatories
12 filed late, but our ability to process interrogatories
13 and Statements of Issues once the hearing commences,
14 you know, certainly is taxing us past the point that we
15 can cope with and I expect I am probably speaking for
16 the other parties as well, particularly with regard to
17 Panel 11 and the January 30th date.

18 We will not have answers to
19 interrogatories, they are only due on the 28th of the
20 month and so, in terms of focusing on issues on which
21 we will cross-examine, we will be doing that without
22 the benefit of our interrogatory replies which means we
23 cannot be as exact as we could be some time later or as
24 comprehensive.

25 THE CHAIRMAN: Well, we perhaps could

1 give a week's extension on the Statement of Issues for
2 Panels 10 and 11 because we will be commencing on the
3 30th with Panel 8 and still have Panel 9 after that.

4 MR. FREIDIN: I just want to advise you
5 that Mr. Armson has advised me that he is not available
6 until February the 8th.

7 I don't know how long cross-examination
8 is going to take on Panel No. 8, but really that means
9 there is six days -- actually five days of hearings, if
10 you take it Mondays are half days for 8, you would have
11 to take five full days before I could tell you whether
12 Mr. Armson is available to start right away.

13 What I had contemplated perhaps doing if
14 Mr. Armson is not available when 8 ends, that I skip
15 Mr. Armson only to the extent that I would call some of
16 the operational evidence in Panel No. 10; in other
17 words, I would call Mr. Hynard with respect to some of
18 the silvicultural methods and I would call Mr. Oldford
19 who would describe logging methods, all information
20 which I think would be helpful in any event and, of
21 course, also some of the things that Mr. Armson will be
22 dealing with.

23 But, in any event, once those two people
24 are finished then jump back -- that should be enough
25 time for us to jump back and deal with Mr. Armson.

1 So...

2 THE CHAIRMAN: But how are we going to
3 get past trying to scope some issues in Panel 10 if you
4 are going to go right into Panel 10 without any
5 scoping?

6 MR. FREIDIN: When are the 10
7 interrogatories due?

8 MR. HUNTER: The 20th.

9 MS. SWENARCHUK: No, that is 11.

10 MR. HUNTER: I'm not sure.

11 MR. FREIDIN: This month?

12 MS. SWENARCHUK: The 10 interrogatories
13 were due...(inaudible)

14 MR. FREIDIN: Right. So people should in
15 fact be able to submit their issues in relation to 10
16 now that this problem with Ms. Swenarchuk has been
17 raised.

18 THE CHAIRMAN: So then, why can't we deal
19 with having Statements of Issues be submitted for Panel
20 10 by January 30th, and then we will delay it for the
21 11.

22 MS. SWENARCHUK: It is no worse than any
23 other time. And for Panel 11, then...?

24 THE CHAIRMAN: And for Panel 11 we will
25 make it a week later.

1 MS. SWENARCHUK: We may not have
2 interrogatories by that time.

3 MR. MANDER: You are saying February
4 20th?

5 MS. SWENARCHUK: The interrogatories for
6 Panel 11 by January 20th.

7 MR. MANDER: Oh, I see.

8 ---Discussion off the record.

9 THE CHAIRMAN: I am sorry, unfortunately
10 we don't have the dates when replies are due.

11 MR. FREIDIN: I think I have got it. Ms.
12 Murphy sent me a telex this morning or a fax with that
13 information.

14 Okay, interrogatories -- oh, when the
15 interrogatories have to be answered?

16 THE CHAIRMAN: Right.

17 MR. FREIDIN: All right. I just have the
18 date that they were to be received, by January the
19 20th.

20 MR. CAMPBELL: Technically is that where
21 the 40-day period kicks in, as of the date of
22 submission?

23 MS. SEABORN: 40 days from January 20th.

24 MR. FREIDIN: We have 40 days to answer
25 it from January the 20th.

1 MR. MANDER: 15 days from the date upon
2 submission.

3 THE CHAIRMAN: 15.

4 MR. CAMPBELL: No, but then I think --
5 don't they have to be provided some point prior to the
6 Panel's appearance?

7 MR. MANDER: We sort of threw that rule
8 out. That was our original ruling on February 26th,
9 but...

10 THE CHAIRMAN: That was supplanted by...

11 MR. MANDER: By the September 16th ruling
12 which made it in relation to when they received the
13 interrogatories rather than when evidence is given.

14 So now it is 15 days upon which it
15 receives written interrogatories.

16 THE CHAIRMAN: So that would bring it up
17 to around the 5th or so of February and so perhaps the
18 end of the first week would be too early for 11.

19 Perhaps it would have to be.

20 MS. PALOWSKI: The 13th.

21 THE CHAIRMAN: The 13th of February. All
22 right.

23 Let us set then the 13th of February for
24 receiving Statements of Issue relative to Panel 11.
25 This may have the result, Mr. Freidin, that that

1 doesn't give you two weeks prior to when the evidence
2 begins, but we may just have less time to adjust.

3 If that is the case, unfortunately until
4 we get into one of these specific panels that starts
5 dealing at length with some of these things, we won't
6 get back onto a schedule where I think we can do the
7 scoping sessions and allow a couple of weeks for you to
8 adjust before the next panel.

9 MR. FREIDIN: Right. I would just ask
10 the Board to consider perhaps choosing a date, you
11 know, early when we get back to deal with the scoping
12 session for 10 because of that problems.

13 In other words, if they are supposed to
14 be in on January the 30th, I would like an opportunity
15 to look at them and then perhaps even come to the Board
16 on January the 31st or even the 1st and say: Look it,
17 can we have a scoping session tomorrow on this?
18 Because I think once I have had a chance to look at it,
19 then I would like to have a scoping session as soon as
20 possible.

21 THE CHAIRMAN: Well, the idea is, we are
22 going to hold it two or three days after receiving the
23 Statements of Issues from the various parties and our
24 further intention is that we are going to hold the
25 scoping sessions up there in Thunder Bay as part of the

1 proceedings.

2 Now, it may well be that it will be
3 either early one morning or later one day after hearing
4 evidence in the normal course, but perhaps if we are
5 going to get the Statements of Issue in for Panel 10
6 January 30th, we could set a scoping session for
7 February 2nd or something.

8 Why don't we hold it on the Wednesday,
9 because Thursday we will be coming back...

10 MR. FREIDIN: Mr. Chairman, I would just
11 like to indicate that it is my respectful submission
12 that the scoping sessions not be looked upon as add-ons
13 to the normal day of evidence. The day is long, there
14 are things which occupy, I think, all counsel after we
15 break at 4:30 or five o'clock.

16 THE CHAIRMAN: All right. Why don't we
17 do this: The day we have a scoping session we will
18 just start a half hour earlier than our otherwise
19 normal starting time.

20 MR. FREIDIN: That is better than an
21 add-on.

22 MR. CAMPBELL: Mr. Chairman?

23 THE CHAIRMAN: That is an add-before.

24 MR. CAMPBELL: Well, an add-before, Mr.
25 Chairman. I think that all of these things - and

1 particularly during this period of February when all
2 indications are we will be getting a substantial amount
3 of material late in January - the hearing days are
4 long, counsel do like to prepare so that we don't look
5 like idiots too often in front of the Board and, quite
6 frankly, I am very sympathetic with and would like to
7 support Mr. Freidin's submission that the hearing day,
8 that is the number of hours, be it before or after and
9 not be extended unduly.

10 I certainly, as has everyone else in
11 these proceedings I expect, been responsible for cases
12 where basically you are preparing from the moment you
13 wake up to the moment you go to sleep, and there is
14 some limit and we are going to be extremely busy, we
15 have got interrogatories, scoping issues, we are going
16 to have a huge amount of material between now and the
17 end of January and I think there is great danger that
18 the number of hours and number of days per week that we
19 are on the present plan going to be sitting is, in the
20 end, not going to be helpful to the Board.

21 THE CHAIRMAN: Okay. You have convinced
22 us to the point of saying that we won't add on the time
23 for the scoping sessions over and beyond a regular
24 hearing day.

25 So we will take the time at, say, the

1 outset. Because we don't know where we will end up on
2 a day in terms of evidence, we will do at the outset of
3 a particular day.

4 So why don't we set the scoping session
5 for Panel 10 on the Wednesday morning, which is
6 February the...

7 Put it this way: Do the parties need
8 more than one day to look at the responses of the
9 Statements of Issues of the other parties, and does the
10 proponent need more than one day?

11 MR. FREIDIN: If they were the length
12 that they were this time, I think.

13 THE CHAIRMAN: Well, we don't suspect
14 them to be much longer either.

15 MR. FREIDIN: We could do it in a day,
16 certainly try.

17 MS. SWENARCHUK: So are we still doing
18 Panel 9 though in the evening on the 30th?

19 THE CHAIRMAN: Yes, I think we will do
20 Panel 8 because we really should have done Panel 9
21 today, but we feel we cannot because some of the
22 parties didn't respond appropriately because they
23 weren't sure that Panel 9 was included with Panel 8.

24 So we will do Panel 9 January 30th.

25 MR. WILLIAMS: Mr. Chairman, could I

1 suggest 48 hours rather than 24 to respond, given you
2 will be doing them up there and we may have to get
3 instruction from other sources?

4 THE CHAIRMAN: All right. So Thursday
5 morning which is February 2nd, we will deal with Panel
6 10. Okay.

7 And Panel 9's scoping session will be the
8 evening of January 30th.

9 MR. EDWARDS: What time on Thursday,
10 please, Mr. Chairman?

11 THE CHAIRMAN: We normally start at 8:30
12 I believe on Thursday, so we will start at 8:30. Okay?

13 MR. WILLIAMS: So Panel 9 is the only one
14 that will be extra curricular?

15 THE CHAIRMAN: That will be extra
16 curricular because most of the Statements of Issues for
17 that are in, some aren't, and we will deal with the
18 actual scoping of Panel 9 the evening of January 30th.

19 MR. WILLIAMS: The rest subsequently will
20 be dealt with during the course of the hearing day?

21 THE CHAIRMAN: During the course of the
22 hearing on a morning at the outset of a particular day
23 which will be roughly 24 hours after the date for
24 submission.

25 MR. WILLIAMS: 48 hours?

1 THE CHAIRMAN: Sorry, 48 hours after the
2 date for submission of Statement of Issues from all the
3 parties.

4 MR. HUNTER: Mr. Chairman, while we are
5 on procedural matters, if I can ask your indulgence and
6 that of counsel.

7 Again, I would like to book time to be
8 more flexible this time on the 7th or 8th. I have a
9 matter in Thunder Bay on the 9th and, as a question of
10 cost and time, I gather that MNR will lead its evidence
11 on the Monday and the Tuesday and then of course the
12 cross will start on the Wednesday.

13 So there is Wednesday the 1st of February
14 and then half a day on the Thursday, the 2nd; is that
15 correct?

16 THE CHAIRMAN: Yes.

17 MR. HUNTER: We are off on the Friday?

18 THE CHAIRMAN: That's right.

19 MR. HUNTER: If at all possible I would
20 like to take half a day, either on the 7th or the 8th
21 for my cross-examination. So if I can perhaps speak to
22 other counsel and get a sense of what their schedules
23 are, we can work that out.

24 THE CHAIRMAN: All right. Well, I
25 suggest that counsel try and work that out amongst

1 yourselves and if you have a problem at that point,
2 then come to the Board.

3 Now, I just want to make some other
4 announcements with respect to some scheduling. First
5 of all, on February 27th and March 6th the Board had
6 previously indicated it would be starting at 9:30 in
7 the morning, but that will necessitate effectively
8 coming in the night before, at least those coming from
9 Toronto and Sudbury.

10 The Board wants to change that so that we
11 will start at 1:00 on February 27th and March 6th and
12 we will sit a bit later each of those days.

13 Given the schedules that we all have, we
14 think it is unfair to force counsel to give up part of
15 their weekend in order to get up there the night
16 before, so we will attempt to be magnanimous in that
17 respect and start on the Monday at 1:00 p.m.

18 MR. FREIDIN: I ask you to do everything
19 possible to return my weekend to me, first.

20 THE CHAIRMAN: Well now, one last comment
21 with respect to the Statements of Issues themselves.

22 The Board just wants to say something on
23 the format and it seems to us that if parties would
24 attempt to formulate their Statements of Issues in the
25 manner that the statement was formulated for on behalf

1 of the Ministry of the Environment, that is Mr.
2 Campbell's statement and Forests for Tomorrow, Ms.
3 Swenarchuk's statement, the Board would be appreciative
4 of that.

5 Once again, it follows the format
6 basically set out in the Board's order, so that when
7 you are dealing with the issues it indicates clearly
8 which issues upon which the parties have no dispute,
9 which issues upon which the party wants to
10 cross-examine, and which issues where further oral
11 explanation is required.

12 And it makes it just a little easier if
13 we are all using the same format where possible.

14 MR. CAMPBELL: Mr. Chairman, in
15 responding to the Board's order we separately
16 identified as a fifth category the additional issues.
17 We felt that was helpful, it sort of focused -- or the
18 fact that this was something that we saw as being over
19 and above and dealt with the existing issues basically
20 in the first four categories.

21 So to that extent, it is slightly
22 different than the Board's order, but we felt it was
23 helpful to focus specific attention on those matters
24 which we felt were in addition to what was covered in
25 the witness statement.

1 THE CHAIRMAN: And the Board agrees, Mr.
2 Campbell, that would be helpful for all parties to do
3 because obviously when you are looking at issues,
4 parties may find issues not identified by the proponent
5 and may also want to bring everyone's attention to
6 issues that should be identified or dealt with.

7 And so that would be helpful to have that
8 fifth category because, if nothing else, it will
9 indicate to the proponent some of the concerns out
10 there by other parties and the proponent can then
11 decide whether or not in fact he is going to deal with
12 it in this particular panel or deal with it in some
13 other panel. So that would be helpful as well.

14 So if all of you would at least stick to
15 the categories set out by way of an example in Mr.
16 Campbell's statement and perhaps add that fifth
17 category as well for the following Statements of Issue,
18 then we will have a much easier format for all of us to
19 work with.

20 MR. FREIDIN: Mr. Chairman, in relation
21 to the format, I think the addition by Mr. Campbell is
22 certainly helpful and in relation to Statements of
23 Issues, where in fact someone indicates they would like
24 to examine on a paragraph, for instance, I believe it
25 would be helpful, at least to the proponent, to have

1 some sense of what point the cross-examiner would like
2 to establish be stated in the issues.

3 I mean, I received some statements in
4 relation to Panel 9 where it just said: I will
5 cross-examine on this paragraph and it is difficult for
6 me to focus or highlight the matter of concern to that
7 party without some idea of why they want to
8 cross-examine.

9 THE CHAIRMAN: Well, to some extent that
10 depends on your paragraph, Mr. Freidin. If your
11 paragraph was clear as to what the issues were and
12 somebody wants to cross-examine on it, they are
13 referring probably to those issues, but the Board takes
14 your comment in the spirit it is offered.

15 MR. FREIDIN: I am making just a general
16 observation not pointing at anybody.

17 THE CHAIRMAN: Okay.

18 Now, anything else that we should be
19 dealing with at this point, other than the locational
20 aspect that I said I would deal with at the very end.

21 MR. FREIDIN: In relation to the FMA
22 matter, as I indicated I will advise counsel who are
23 here today what the position of the Ministry will be.

24 If in fact it is decided that it is going
25 to become part of 15, I'll probably advise you that I

1 cannot undertake that whatever documents or explanation
2 which would go along with that will be available by the
3 end of the month, but if it becomes part of 15, it will
4 be available as soon after the end of the month as we
5 can get it.

6 THE CHAIRMAN: And I take it that you are
7 going to have all of your witness statements, perhaps
8 with that one exception, distributed by the end of the
9 month?

10 MR. FREIDIN: That is my understanding.

11 THE CHAIRMAN: Okay. In that regard, Mr.
12 Freidin, when we provided in the order that the
13 statements would be -- the witness statements would be
14 provided to the parties by such and such dates, we
15 meant in their hands, as opposed to putting it in the
16 mail on December 19th to the Board, a certain
17 statement, and the Board receiving it about a week and
18 a half ago, or a week ago.

19 MR. FREIDIN: Which statement was that?

20 THE CHAIRMAN: What was that, Doug?

21 MR. MANDER: 12 I think.

22 THE CHAIRMAN: We think it was Panel --
23 the witness statement for Panel 12 and it was mailed by
24 you to the Board on December 19th and we only received
25 it a few days ago.

1 We were hoping that wasn't the case with
2 the parties.

3 MR. FREIDIN: Well, apparently there was
4 a problem. 11 was mailed -- put in the mail on
5 December the 9th; Panel 13, December the 23rd; Panel
6 14, December the 28th and I don't know -- I know Mr.
7 Campbell had some difficulty and maybe Mr. Hunter with
8 an earlier panel, we straightened out the problem with
9 Mr. Hunter.

10 I hear you and we will do everything we
11 can and I am not intimately involved in the preparation
12 and the timing of all of these releases but I hear you.

13 THE CHAIRMAN: Okay. But put it to Ms.
14 Murphy the idea for the parties getting all of their
15 statements by the end of the January, that was part of
16 the consideration for the adjournment in the first
17 place.

18 MR. FREIDIN: Her notes indicate to me
19 that they will be delivered by the end of January and I
20 think she knows what delivered means.

21 THE CHAIRMAN: Okay. Well, we mean in
22 their hands, in case there is any doubt.

23 MS. SWENARCHUK: My other question, Mr.
24 Chairman, was whether it is possible, or if you can
25 just clarify scheduling.

1 You said a two-week break in March. Is
2 it is the Board's intention to sit every week between
3 now and the end of June besides those two weeks?

4 THE CHAIRMAN: When we say every week
5 yes, most weeks with the exception of the odd day here
6 and there because of unavoidable conflicts.

7 Yes, we are going to step up the pace, if
8 we can put it that way and sit fairly intensively until
9 the break at end of June.

10 And, as you know, we are breaking for
11 July and the first week of August for the summer recess
12 and we want to cover as many hearing days as we can
13 between when we come back from the spring break, which
14 I believe is the 28th of March, until June 30th.

15 Now, there may be the odd day, Ms.
16 Svenarchuk, where for one reason or another we won't be
17 sitting, but it is going to be a long haul for that
18 period of time in any event.

19 MR. WILLIAMS: Mr. Chairman, looking into
20 the crystal ball and quite a distance into the future I
21 presume, what months or what year you be looking at
22 dealing with the satellite hearings? At what stage of
23 the hearings would they be falling into place as you
24 see it?

25 I don't think it has ever really been

1 discussed as to the sequence.

2 THE CHAIRMAN: I don't want to enter
3 into, Mr. Williams, a lengthy discussion on the
4 satellite hearings, but we want consideration given to
5 perhaps after the industry's case or even before the
6 industry's case but after the Ministry's case, to
7 possibly consider going to two or three of the
8 satellite locations where there won't be extensive
9 participation.

10 There are, we are sure - and Mr. Mander
11 is getting an indication from parties all the time -
12 that there will be two or three locations which may
13 only take a couple of days apiece as opposed to some
14 locations, for instance like North Bay, which we
15 understand there may be some extensive participation,
16 and putting some of these satellite sessions in place
17 before we finish with the main parties.

18 And there is some reasoning behind that
19 as far as the Board is concerned, in that these
20 satellites locations, to a large extent, are going to
21 be the opportunity for the lay public, the local
22 intervenors to participate in this process and we have
23 some concern about them being left totally to the end
24 of the whole process. So that we may be able to fit
25 some of those locations in somewhere in the middle.

1 In addition, we are trying to give
2 consideration to the fact that some of the parties want
3 to put in their evidence, we understand, in Toronto
4 and I think we were given an indication by Ms.
5 Swenarchuk that your coalition fell into that category
6 and we also already have on record the indication that
7 your group may take four or five months or whatever to
8 put in their evidence.

9 If that is the case, it would seem to us
10 to probably make sense to try and accommodate that kind
11 of scheduling during the winter or as close to the
12 winter as might be possible.

13 Mr. Edwards is expressing some concern
14 about that whole idea but, at some point in time, the
15 parties are going to have their option as to where they
16 want to present their evidence and, if it is the choice
17 of the coalition to put it in Toronto, perhaps it makes
18 more sense, given the problems of winter travel, to try
19 and schedule that for some of the winter months as
20 opposed to the summer months.

21 Anyways, whether we can work that into
22 where we are in the days we don't know, because
23 obviously the Ministry has to finish, the industry has
24 to finish, two or three other smaller parties in
25 support have to finish and then we are on to the

1 coalition.

2 And it may just work out, according to
3 our timing, around the end of January as a possibility
4 to then start with the Federation's case for, say, the
5 next three or four months.

6 When we worked it out, that might be
7 possible. What in fact will happen we have no idea,
8 but that is our thinking about some of these other
9 locations.

10 And, as far as you are concerned, Mr.
11 Williams, I think also you indicated you wanted to
12 present in Toronto?

13 MR. WILLIAMS: That's correct, Mr.
14 Chairman, but I think we are aware of other...

15 THE CHAIRMAN: But you are going to be
16 down the line a little bit?

17 MR. WILLIAMS: Oh yes.

18 THE CHAIRMAN: Anyways.

19 MR. WILLIAMS: With regard to satellite
20 hearings, we are aware of the fact that maybe parties
21 making presentation in some of the other satellite
22 locations other than Toronto that would need some, I
23 think reasonable, lead time to know when they are going
24 to be visited upon.

25 THE CHAIRMAN: When we get back to

1 Thunder Bay at the end of January we will give some
2 serious consideration as to when we might fit in some
3 of these satellite hearings when we have a better idea
4 of when the Ministry is going to end their case.

5 MR. WILLIAMS: But certainly none before
6 the Ministry is finished its case, as I understand it?

7 THE CHAIRMAN: Tell me, just for
8 interest sake, Mr. Freidin, do you have any possibility
9 of advising whether or not, in your view, it would be
10 possible to finish your case by the time we rise in
11 June?

12 MR. FREIDIN: I was just going to say no,
13 but I think optimistically -- very optimistically the
14 end of June, probably more realistically some time in
15 September, and pessimistically some time after and that
16 is what I have been saying for some time now and I
17 cannot tell you any better than that, Mr. Chairman.

18 THE CHAIRMAN: Okay. Let's just deal
19 quickly now with one last issue.

20 MR. CAMPBELL: Before we turn to that,
21 Mr. Chairman, I would just like to come back for a
22 moment to the matter of scheduling.

23 I spoke earlier of the particular
24 problems with extending a hearing day and, although the
25 Board announced its hearing schedule earlier, I

1 certainly have had some time to think about it in the
2 interim and the full force and effect of the Board's
3 scheduling notice of December 6th, I think, is
4 something that concerns counsel.

5 THE CHAIRMAN: You mean the couple of
6 five-day weeks?

7 MR. CAMPBELL: Well, not just the
8 five-day weeks, Mr. Chairman. I can speak first just
9 from experience as a proponent and then experience in
10 dealing with the particular material on this case.

11 My experience in acting for proponents in
12 matters before this Board has been that efficiency and
13 effectiveness are not necessarily the same thing. If
14 efficiency is taken as holding as many hearing days as
15 possible, I think in terms of proceeding through this
16 case, the way that the scoping exercise and the other
17 initiatives that the Board has taken are going to
18 result in effectiveness and overall achieving the time
19 objectives that you have in mind, it is not necessarily
20 by sitting four days a week without any relief at all;
21 that is, just sitting continuously four days a week with
22 the exception of the March break

23 I would like to know whether the Board is
24 prepared to consider submissions aimed at a schedule
25 which is basically more one of three weeks on and one

1 week off? Certainly it is my experience that even that
2 schedule, from a proponent's view, is extremely
3 difficult to adhere to but can be done.

4 How Mr. Freidin is going to deal with the
5 schedule that is before him, quite frankly, I just
6 cannot contemplate. It is a large complex case and we
7 are now really starting into an area which I think are
8 the most complex set of issues, that relationship
9 between taking all of this information and bringing it
10 down through a planning process to ensuring that all
11 our objectives are met when the undertaking is carried
12 out on the ground.

13 I think the number of hearing days --
14 perhaps we shouldn't get too lost in the average number
15 of hearing days so far. I think all counsel are
16 prepared to work hard to make this hearing go forward
17 in as efficient a way as possible, but there is an
18 effectiveness consideration that I think is in great
19 danger of being overlooked and certainly, far be it
20 from my client's point of view, to suggest anything
21 that would unduly delay this hearing.

22 I am just very concerned that the
23 opportunity for -- that the realistic expectations that
24 the Board would have in terms of preparation of
25 counsel, both the proponent in presenting evidence and

1 in counsel in cross-examining, simply cannot be met
2 under this schedule and that our ability to help the
3 Board achieve its objectives needs significant and, in
4 fact, is directly dependent upon our ability to
5 prepare.

6 And, quite frankly, I think if I was to
7 reduce it to one single line, I have grave and serious
8 doubts about whether we have, in this timing, anything
9 like the time that is required to prepare. These are
10 matters that require -- we can all, in our own various
11 ways, get up and make a noise; what we want to do is
12 get up and make a thoughtful, reasoned, knowledgable
13 contribution to moving this case along, we all want to
14 move it along.

15 When I look at the material that we have
16 to deal with, I can tell you that during the month of
17 January, in order simply to meet the January deadlines,
18 Ms. Seaborn and I are spending two days a week
19 approximately in what might be called preparation, at
20 least two days a week in meetings to make sure we
21 understand fully the material that is coming before us,
22 and we haven't even started to put together
23 cross-examinations yet; that is, just dealing with the
24 Board's filing requirements and interrogatories.

25 Other parties must be in the same

1 position and I am fearful that we are sacrificing
2 quality of participation in an effort to achieve
3 hearing days and, in my submission, I think the Board
4 might be wise to give an opportunity for counsel to
5 address whether they share that concern.

6 If it turns out that I am a lone voice in
7 the wilderness crying wolf unnecessarily, then so be
8 it. We are sort of coping, but it is very difficult
9 and quite frankly, as I say, I cannot imagine how the
10 proponent must feel about the requirements to deal with
11 the schedule.

12 It is not simply a matter of putting
13 people onto the case and, in some ways, the more people
14 you add to support the actual appearances in the
15 hearing, sometimes the more complicated it gets and the
16 more difficult it gets. It isn't simply a matter of
17 putting resources into it, it is a matter of having a
18 little bit of time to think through what the positions
19 are that ought to be pursued in the hearing and how
20 best to pursue them in a constructive and effective
21 way. And it is a matter that I guess, as we worked our
22 way through December and January, has become of
23 increasing concern to us in the course of our
24 preparations and I guess I am indicating a request to
25 the Board as to whether the Board is willing to pursue

1 some discussion of that matter?

2 THE CHAIRMAN: Well, Mr. Campbell, the
3 Board is not willing to pursue that discussion at this
4 time. We take into account what you are saying, we
5 understand it is a concern of the parties.

6 The Board has put into place several
7 procedural initiatives to try and expedite the hearing
8 of the evidence with, at the back of its mind, not
9 sacrificing the quality of participation in any way.

10 We will be amenable to considering your
11 request and listening to the advice and submissions of
12 parties, but not until after the spring break. We want
13 to see how our scoping procedures and how some of the
14 other initiatives that we have instituted work and if
15 we are satisfied that we are getting somewhere in terms
16 of focusing, in terms of concentrating on issues really
17 in dispute and that the hearing moves along at a
18 slightly quicker pace than it has up to this point,
19 then I think the Board will be fully prepared to
20 consider perhaps a suggestion along the lines that you
21 have made.

22 I think at this stage the Board has
23 agreed amongst the three of us that we want to see some
24 real progress before we start looking at an alternative
25 in terms of sitting a lesser number of days.

1 So we are certainly going to take your
2 comments into account and all we are saying is, is that
3 for the next month and one week, five weeks, we are
4 going to go basically with the schedule we have set and
5 see what happens.

6 During that time, there will be two or
7 three other scoping sessions and there will be an
8 opportunity for at least three panels' worth of
9 evidence to be dealt with and we will see how it goes
10 from that point on.

11 MR. EDWARDS: Mr. Chairman, I am going to
12 have to apologize because I have to leave.

13 THE CHAIRMAN: Very well.

14 MR. EDWARDS: If I could very briefly
15 address the issue of the location of the future
16 session?

17 THE CHAIRMAN: Yes.

18 MR. EDWARDS: The position of my client
19 is that the decision to hold the hearings in Thunder
20 Bay was the right one in the first instance and remains
21 the right one.

22 A lot of people have made long-term
23 commitments, as you yourself have noted, based on that
24 decision. The people of northern Ontario may not be
25 getting informed as well as we might like about the

1 proceedings and about what is going on, but certainly
2 we think the appropriate location, at least for these
3 hearings, which will affect all of those people, is in
4 northern Ontario.

5 And, for that reason, we strongly oppose
6 any application to move the hearing to Toronto and just
7 since I do represent the interests of tourist
8 outfitters in northern Ontario I can note that there is
9 about a meter of powder snow right now, very nice
10 skiing conditions.

11 So this might not affect Mr. Campbell
12 when he works all evening and all weekend, but the rest
13 of you may find it less than a dubious experience to be
14 in Thunder Bay during the winter.

15 THE CHAIRMAN: So the Board should bring
16 its boards with them?

17 MR. EDWARDS: Bring your sticks, yes.
18 Those are my submissions, Mr. Chairman.

19 Thank you.

20 THE CHAIRMAN: Mr. Freidin, what about
21 the subject of moving--

22 MS. SWENARCHUK: Mr. Chairman...

23 THE CHAIRMAN: --the presentation of your
24 evidence anywhere else.

25 MS. SWENARCHUK: Can I just add one

1 comment to what Mr. Campbell was saying before, just to
2 bring one thing to your attention.

3 THE CHAIRMAN: All right.

4 MS. SWENARCHUK: That is in Forests for
5 Tomorrow's original motion for the compelling of all
6 MNR's case, the original motion asked for a 60-day
7 adjournment after the case was produced in order to
8 study it, consolidate it and then move on.

9 And I am not suggesting now another
10 adjournment, but I just want to suggest: When you
11 consider, you know, how things are going to go in the
12 next -- between now and the middle of March, this is
13 precisely going to be the most difficult period for all
14 of us because of all this material coming in and all
15 the time lines and, unfortunately, what has been lost
16 is the time to reflect, put the entire case together in
17 our mind and having to come back to the hearing then
18 with a long-term perspective on how it all fits
19 together.

20 We have not had the opportunity to do
21 that and with this kind of hearing schedule I am
22 concerned that we are not going to have that kind of
23 opportunity at all. So that benefit, both in terms of
24 quality and of presentation and long-term time-saving,
25 has been lost.

1 THE CHAIRMAN: Well, that may or may not
2 be, but one of the considerations that the Board gave
3 - in granting the two-month adjournment in the first
4 place was the fact that when we got back we would move
5 along at a steady pace and we are already providing for
6 a two-week spring break and a month and one week summer
7 break, and we will consider perhaps lessening the
8 number of days after we have seen some progress.

9 So your comments are also noted.

10 Going back to the locational question.

11 Mr. Freidin?

12 MR. FREIDIN: On this occasion Mr.
13 Edwards and I agree.

14 THE CHAIRMAN: So you have no desire to
15 present your case other than in Thunder Bay?

16 MR. FREIDIN: That is correct.

17 THE CHAIRMAN: Mr. Campbell?

18 MR. CAMPION: I have no submissions on
19 the matter, Mr. Chairman.

20 THE CHAIRMAN: No submissions. Mr.
21 Cosman?

22 MR. COSMAN: I am in agreement as well.
23 That is the position of our client as well, that there
24 should not be a move of the hearings to Toronto from
25 Thunder Bay.

1 THE CHAIRMAN: Mr. Hunter?

2 MR. HUNTER: No submissions.

3 THE CHAIRMAN: Ms. Swenarchuk, the matter
4 is closed.

5 We will continue with the Board's
6 original decision as we also feel it was the right one
7 and is the right one, however, we were willing to at
8 least reconsider the matter if the major participants,
9 i.e., the participants who are participating on a daily
10 basis, felt otherwise.

11 I don't think we have that consensus and,
12 accordingly, we will retain our earlier decision in
13 force.

14 MS. SWENARCHUK: Our concern was that we
15 may not be participating much longer.

16 THE CHAIRMAN: That is another matter and
17 that, as you know, Ms. Swenarchuk, deals with funding.
18 That is not something that the Board has the
19 jurisdiction at this time to deal with and if those are
20 your concerns, then I am sure you know where you might
21 go to have those concerns dealt with, if they will in
22 fact be dealt with.

23 Very well, ladies and gentlemen, thank
24 you very much for coming and we will see you on the
25 30th.

1 Thank you.

2 ---Whereupon the hearing adjourned at 1:00 p.m.,
3 to be reconvened on Monday, January 30th, 1989,
4 commencing at 1:00 p.m.

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